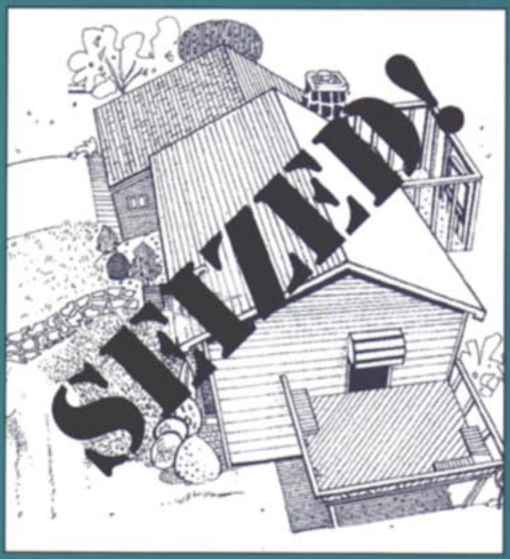
THE FREEMAN

IDEAS ON LIBERTY



Seizure Fever:
The War on Property Rights

Why Mass Media Mergers Are Meaningless

Predatory Unionism

Building Code Blues

JANUARY 1996

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January 1996 Vol. 46, No. 1

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IDEAS ON LIBERTY

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PERSPECTIVE

Income "Distribution"

Despite a voluminous and often fervent literature on "income distribution," the cold fact is that most income is *not* distributed: It is *earned*. People paying each other for goods and services generate income. While many people's entire income comes from a salary paid to them by a given employer, many others collect individual fees for everything from shoe shines to surgery, and it is the sum total of these innumerable fees which constitutes their income. . . .

To question the "fairness" or other index of validity of the existing statistics growing out of voluntary economic transactions is to question whether those who spent their own money to buy what they wanted from other people have a right to do so. To say that a shoe shine boy earns "too little" or a surgeon "too much" is to say that third parties should have the right to preempt the decisions of those who elected to spend their money on shoe shines or surgery. To say that "society" should decide how much it values various goods and services is to say that individual decisions on these matters should be superseded by collective decisions made by political surrogates. But to say this openly would require some persuasive reasons why collective decisions are better than individual decisions and why third parties are better judges than those who are making their own trade-offs at their own expense.

—THOMAS SOWELL
The Vision of the Anointed

Harassing Business

The only viable definition of monopoly is a grant of privilege from the government. It therefore becomes quite clear that it is impossible for the government to *decrease* monopoly by passing punitive laws. The only way for the government to decrease monopoly . . . is to remove its own monopoly grants. The antitrust laws, therefore, do not in the least "diminish monopoly." What

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they do accomplish is to impose a continual, capricious harassment of efficient business enterprise. The law in the United States is couched in vague, indefinable terms, permitting the Administration and the courts to omit defining in advance what is a "monopolistic" crime and what is not. Whereas Anglo-Saxon law has rested on a structure of clear definitions of crime, known in advance and discoverable by a jury after due legal process, the antitrust laws thrive on deliberate vagueness and *ex post facto* rulings. No businessman knows when he has committed a crime and when he has not, and he will never know until the government, perhaps after another shift in its own criteria of crime, swoops down upon him and prosecutes. The effects of these arbitrary rules and *ex post facto* findings of "crime" are manifold: business initiative is hampered, businessmen are fearful and subservient to the arbitrary rulings of government officials, and business is not permitted to be efficient in serving the consumer.

—MURRAY ROTHBARD,
Power and Market

What Was Lost

I saw in State Rights the only availing check upon the absolution of the sovereign will, and secession filled me with hope, not as the destruction but as the redemption of Democracy. . . . Therefore I deemed that you were fighting the battles of our liberty, our progress, and our civilization; and I mourn for the stake that was lost at Richmond more deeply than I rejoice over that which was saved at Waterloo.

—Letter from Lord Acton to
Robert E. Lee, November 4, 1866

1995–96 Olive W. Garvey Fellowships

Since 1972, the Garvey Fellowship program has awarded financial fellowships to advance the higher education of outstanding young academics around the world through a competitive essay contest on the meaning and significance of economic and personal liberty. Olive W. Garvey Fellows have since become some of the finest of scholars, business leaders, and journalists, applying and advancing public knowledge and appreciation internationally for the ideas of individual liberty and personal responsibility.

The Independent Institute, the sponsor of the program, has announced the following recipients of the 1995–96 Olive W. Garvey Fellowships: *First Prize, $2,500—Bryan Caplan* (Department of Economics, Princeton University); *Second Prize, $1,500—Jeffry W. Duffy* (London School of Economics); and *Third Prize, $1,000—Michael Huemer* (Department of Philosophy, Rutgers University).

This year's Olive W. Garvey Fellowships have been awarded to the authors of the top three essays on the topic, "The road to prosperity and human welfare: free markets or government controls?" Mr. Caplan's first-prize essay, "Freedom and Happiness," appears on pages 37–41 of this issue. Excerpts from the second- and third-prize winning essays start on page 42.

All entries were reviewed by a panel of three distinguished scholars: Gerald Gunderson (Professor of Economics, Trinity College), Daniel Klein (Professor of Economics, University of California, Irvine), and John Morehouse (Professor of Economics, Wake Forest University).

For further information on the Olive W. Garvey Fellowships program, please contact Ms. Theresa Navarro, Director of Program Services, The Independent Institute, 134 Ninety-Eighth Avenue, Oakland, CA 94603; Phone: (510) 632-1366; fax: (510) 568-6040; E-mail: independ@dnai.com.

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IDEAS ON LIBERTY

Why Mass Media Mergers Are Meaningless

by Adam D. Thierer

Time Warner Inc.'s $8 billion acquisition of Turner Broadcasting System Inc., along with other recently announced alliances of media giants—Walt Disney and Capital Cities/ABC Inc., Westinghouse Electric Co. and CBS Inc.—has observers of all political stripes wondering whether an already mediocre television programming menu is about to become even less appetizing.

While one can argue the merits or demerits of the mergers on program quality, more disturbing arguments are being put forward that such mergers and alliances should not be allowed to go forward in the first place. The Department of Justice has already said it may challenge elements of the Time Warner-Turner deal and is now looking into the Disney-ABC merger.

This would be a mistake. Prohibiting such alliances from occurring would be *anti*-competitive and an utter waste of regulators' time. There simply is no credible evidence that these mergers will hurt consumers. The old days of mass-media monopolies and shovel-fed couch-potato fare are over. These corporations will compete in a radically modernized media marketplace that is eroding their traditional advantages while forcing them to further improve the quality of their own offerings.

Today's communications, entertainment, and computer markets are becoming increasingly demand-driven. That is, consumers are now, more than ever, being provided with the tools to tailor-make programming to meet their own tastes. A critical juncture is about to be reached in the history of these three distinct sectors as they merge into one new larger industry: the information sector. The digitalization of information—its coding and distribution in a more efficient and cost-effective fashion—has facilitated this process. As it continues, the costs of information processing, storage, and distribution will continue to fall rapidly. Consequently, countless new sources of information and entertainment will make their way into American homes and workplaces, especially via the computer.

It's already happening. Internet surveyists Matrix Information and Directory Services (MIDS) estimate that roughly 13.5 million people currently use the Internet, and that the number is doubling every year. If Internet access continued to grow at that rate (as it has for the past six years), everyone in the world would be wired by 2003! Of course, that won't happen, but such remarkable growth bodes unfavorably for the older media moguls, whose idea of viewer empowerment is a remote control with more buttons.

Mr. Thierer is the Walker Fellow in Economic Policy with The Heritage Foundation in Washington, D.C., and author of the series, "A Policy Maker's Guide to Deregulating Telecommunications."

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No Uncompetitive Advantage

The merging media giants may gain some programming advantages in the short run via their combined pool of investment capital. But, they certainly will have no *uncompetitive* advantages since they will be just one of many providers consumers can request service from in the near future. With consumers calling the shots, the idea that programmers like ABC, CBS, Turner, Time Warner, and Disney will have a serious advantage over all other information-entertainment providers is unrealistic.

Indeed, one must wonder if the television itself will survive the digital storm. Technological visionaries like George Gilder and Nicholas Negroponte warn of the impending death of TV and its eventual overthrow by the more intelligent, programmable personal computer along with its many on-line, consumer-driven services. If the Internet revolution continues apace, they may be right. No wonder the broadcast industry is currently begging Congress to give them additional broadcast licenses *free of charge* to make their transition into the digital world.

This is the real meaning behind the new mergers. Older firms are looking to merge as the world around them becomes less certain. In reality, Americans should feel somewhat sorry for these firms that feel they must "merge or die," so to speak. In essence, their actions are a signal to the world that the old media empires are modern-day dinosaurs headed for extinction. Scholars like Harvard Business School professor Michael Porter have noted that alliances "proliferate in industries undergoing structural change or escalating competition, where managers fear they cannot cope. They are a response to uncertainty, and provide comfort that the firm is taking action." In other words, the merger or alliance is often the last refuge of a desperate corporation, a lifeboat to grab hold of while the bigger ship is sinking. For America's mass-media firms looking to buy competitive advantages both upstream and downstream, they have to hope this strategy works. Meanwhile, pesky information-age entrepreneurs will continue to chip away at the broadcast empire by continuing to offer more innovative services.

But regardless of whether these media merger experiments succeed in the long run, there is no need for policy-makers to intervene and micromanage their transitional efforts. As Negroponte notes: "The combined forces of technology and human nature will ultimately take a stronger hand in plurality than any laws Congress can invent." Being that this is undoubtedly already the case, legislators and regulators can rest easier knowing Disney's Mickey Mouse and his new broadcast buddies won't be monopolists any time soon. □

Op-Ed Watch

The Foundation for Economic Education continues to expand in its efforts to spread the message of liberty. Part of our important work is our newspaper editorial program. Special versions of our best *Freeman* articles are appearing in newspapers across the country—and around the globe. You can help us to monitor our work. If you see one of our articles in your paper, drop us a line or give us a call.

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IDEAS ON LIBERTY

Seizure Fever: The War on Property Rights

by James Bovard

Mass confiscation has become politically fashionable. Politicians and the courts have created an overwhelming presumption in favor of the government's right to seize control over private land, private homes, boats, and cars, and even the cash in people's wallets. While the dispute over property rights is often portrayed as merely an economic contest, the power of government officials to seize private property directly subjugates citizens to the capricious will of those officials.

Once upon a time, possession was nine-tenths of the law. Nowadays, gossip is sometimes nine-tenths of possession. Thousands of American citizens are being stripped of their property on the basis of rumors and unsubstantiated assertions made by the government's confidential informants.

Beginning in 1970, Congress enacted legislation to permit government to seize property of Mafia organizations and big-time drug smugglers.[1] In succeeding decades, other forfeiture laws were enacted, and federal agents can now seize private property under more than 200 different statutes.[2] From 1985 to 1991, the number of federal seizures of property under asset forfeiture laws increased by 1500 percent—reaching a total of $644 million.[3] State and local governments have also seized hundreds of millions of dollars of property in recent years.[4] According to Steven Kessler, a New York lawyer who authored a three-volume 1993 study on federal and state forfeiture, "The use of forfeiture has probably increased a hundred-fold in the last ten years."[5] Thousands of Americans have had their property confiscated thanks to the forfeiture laws.

Unfortunately, the more forfeiture laws legislatures enacted, the less attention police seem to pay to major criminals. Representative Henry Hyde of Illinois noted in June 1993 that 80 percent of the people whose property is seized by the federal government under drug laws are never formally charged with any crime.[6] Representative John Conyers of Michigan declared at a June 1993 congressional hearing: "A law designed to give cops the right to confiscate and keep the luxury possessions of major drug dealers mostly ensnares the modest homes, cars and hard-earned cash of ordinary, law-abiding people."[7]

Legalized Theft

Willie Jones of Nashville was flying to Houston on February 27, 1991, to purchase plants for his landscaping business. Because Jones was black and paid cash for his plane ticket, the ticket clerk reported him to nearby Drug Enforcement Agency officers,

Mr. Bovard is the author of Shakedown *(Viking, 1995) and* Lost Rights: The Destruction of American Liberty *(St. Martin's, 1994).*

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who presumed Jones was a drug courier. DEA officers at the Nashville airport approached Jones, checked his identification, and asked permission to search him. Although Jones refused to grant permission, the officers searched him anyway and found $9,000 in cash. The DEA agents then announced that they were "detaining" the money. Jones observed: "They said I was going to buy drugs with it, that their dog sniffed it and said it had drugs on it." (A 1989 study found that 70 percent of all the currency in the United States had cocaine residue on it.)[8] Jones never saw the dog. The officers didn't arrest Jones, but they kept the money. When Jones asked the officers for a receipt for his money, they handed him a receipt for an "undetermined amount of U.S. currency." Jones objected and asked the officers to count the money out, but the officers refused, claiming that such an action would violate DEA policy.

Federal judge Thomas Wiseman, in an April 1993 decision, concluded that "the officers' behavior at this point was casual and sarcastic . . . they believed that the seizure of the currency was all but a *fait accompli* . . . they cared little for Mr. Jones's feelings of insecurity."[9] Judge Wiseman concluded that the DEA officials' testimony on the seizure was "misleading," "unconvincing," and "inconsistent" and ordered the money returned—after a two-year legal battle. Jones observed: "I didn't know it was against the law for a 42-year-old black man to have money in his pocket."[10]

A married couple in Ottsville, Pennsylvania, had their $250,000 home confiscated after police found marijuana plants inside the house; the couple and their three children were effectively evicted from their own home. District Attorney Gary Gambardella, who filed the motion to confiscate the home, observed: "People say that selling drugs is a victimless crime, but the children are the real losers here."[11]

Asset forfeiture increases the power of local policemen over people they do not like. In Washington, D.C., police routinely stop black citizens and "confiscate small amounts of cash and jewelry on the streets and in parks—even when no drugs are found or charges filed."[12] Ben Davis, a resident of Washington, complained, "I've got money in both pockets, but I don't know how much. The assumption is, if I can't tell you exactly how much I have, it must be from criminal enterprise."[13]

Increasingly, the mere suspicion of a government official is sufficient proof to nullify all claims that a citizen legitimately owns his property. The Volusia County, Florida, sheriff's department set up a "forfeiture trap" to stop motorists traveling Interstate 95 and seized an average of over $5,000 a day from motorists between 1989 and 1992—over $8 million dollars total. In three-quarters of the seizures, no criminal charges were filed. An investigation by the *Orlando Sentinel* revealed 90 percent of those seizure victims were black or Hispanic.[14] When confronted with this statistic, Volusia County Sheriff Bob Vogel said, "What this data tells me is that the majority of money being transported for drug activity involves blacks and Hispanics."

People whose cash was seized by the deputies received scant due process of law; as the *Sentinel* noted, one deputy told two blacks from whom he had just confiscated $19,000: "You have the right to follow us back to the station and get a receipt." Even citizens who provided proof that their money was honestly acquired (including a lottery winner's proof of his lottery receipts) were treated like drug dealers. Volusia County officials routinely offered "settlements" to drivers whose cash they seized, offering to return a percentage of the seized cash if the drivers would sign a form promising not to sue.

Asset forfeiture laws are turning some federal agents into the modern-day equivalent of horse thieves. Ranchers are being victimized by seizures based on allegations of violations of environmental laws. On March 10, 1992, U.S. Fish and Wildlife Service and state agents trespassed 15 miles onto Richard Smith's Texas ranch, accused him of poisoning eagles, and seized his pickup truck. The agents later tracked down Smith's 75-year-old father, W.B. Smith, and

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seized his pickup truck—threatening to leave an old man who had had five heart bypass operations ten miles out of town with no transportation.[15] The agents produced no evidence to support their accusation and returned the trucks nine months later without filing charges.[16] W.B. Smith complained: "The Fish and Wildlife Service is out of control, and the Endangered Species Act has given them the tools to destroy the ranching industry."[17]

Lawyer Nancy Hollander told the House Government Operations Committee in June 1993: "All too often, in my practice back in Albuquerque, I see cases where someone loses the family pick-up truck at the time of arrest for a non-money related, non-drug federal crime. These persons frequently give up the criminal case, even when the prosecution has little merit, to negotiate the release of a vehicle which provides their livelihood."[18]

Confiscation based on mere suspicion is the essence of contemporary asset forfeiture. In Adair County, Missouri, local police seized Sheri and Matthew Farrell's 60-acre farm based on an unsubstantiated tip from a paid drug informant who claimed that Farrell had a vast field of marijuana and used tractors outfitted with special lights to harvest it at night. Police made no effort to investigate the allegations before seizing Farrell's farm. The case against Farrell and 34 other local defendants collapsed when the informant refused to testify in court—first because he claimed he had laryngitis, and then because he claimed a total loss of memory.[19] Despite the collapse of the prosecution's case, the police refused to return Farrell's farm. They had a change of heart after the *Pittsburgh Press* exposed the case, although they required that the Farrells sign an agreement promising not to sue before giving back the farm. The case cost the Farrells over $5,600 in legal fees.

Distorted Law Enforcement Priorities

Asset forfeiture distorts law enforcement priorities; instead of chasing violent criminals, some police target wealthy citizens. Early in the morning of October 2, 1992, a small army of 31 people from eight law enforcement agencies smashed their way into 61-year-old Donald Scott's home on his 200-acre Trail's End Ranch in Malibu, California. The raiders were equipped with automatic weapons, flak jackets, and a battering ram.[20] Scott's wife screamed when she saw the intruders, Scott came out of the bedroom with a pistol in his hands, and police gunned him down. After killing Scott, the agents thoroughly searched his house and ranch but failed to find any illicit drugs.

Ventura County district attorney Michael Bradbury investigated the raid and issued a report in 1993 that concluded that a "primary purpose of the raid was a land grab by the [Los Angeles County] Sheriff's Department."[21] Bradbury revealed that at a briefing before the raid took place, government agents were informed that the ranch had been appraised at $1.1 million and that "80 acres sold for $800,000 in 1991 in the same area."[22] The law officers at the briefing were told that if they discovered as few as "14 marijuana plants" on the ranch, the entire property could be seized.[23] Bradbury also concluded that a Los Angeles sheriff's deputy had lied to obtain a search warrant and declared: "This search warrant became Donald Scott's death warrant. This guy should not be dead."[24] Los Angeles officials claimed that a confidential informant told them that marijuana was being grown on Scott's ranch, but the informant denied ever making such a statement.[25]

In Pittsburgh, federal prosecutors last year devastated Jane Ward after she had fully cooperated with them in testifying to help solve the murder of her husband, John Ward. Prosecutors decided that John Ward had been a drug dealer and that all of his previous income was drug-related. They proceeded to confiscate almost all of the assets of the widow (who had her own legitimate business); federal officials arrived with a truck at the Ward's home and carted off all the family's furniture. Prosecutors even sought to confiscate all the proceeds from Ward's life insurance; Jane Ward and

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her three children were forced to go on welfare, according to Terrance Reed, Ms. Ward's lawyer and one of the nation's leading authorities on forfeiture law.

Asset forfeiture property grabs are sparking fights across the nation—even in states known for giving government a long leash, such as Maryland. In Frederick, Maryland, police seized a 1988 Toyota pickup truck from a local resident after he bought $40 worth of a drug placebo from an undercover cop at an open-air drug market. Under Maryland law, local police and prosecutors have effectively unlimited power to confiscate any vehicle they suspect was involved, or that the owner intended to be involved, in transporting drugs. Maryland police have confiscated thousands of autos and trucks in recent years, often based on mere accusations.

After Maryland Delegate John Arnick proposed a law to reform the forfeiture procedure to shore up defendants' rights, state officials went berserk. Harford County State's attorney Joseph Cassilly denounced Arnick's proposal: "It's a crazy law. Absolutely crazy. . . . It's just going to inconvenience the hell out of everybody" by requiring police officials to testify in court to explain why cars were confiscated.[26] Frank Charles Meyer, an assistant state's attorney in Baltimore County, justified the existing law: "It hurts the bad guy, it benefits the good guy and it doesn't really cost."[27] Police sometimes "settle" the forfeiture cases by allowing the auto owners to buy back their car for half the car's value.

Government by Gossip

The Justice Department's 1992 annual report on asset seizures declared, "No property may be seized unless the government has probable cause to believe that it is subject to forfeiture."[28] In reality, government officials are seizing people's property based solely on "hearsay"—rumor and gossip— from anonymous informants.[29] (Hearsay evidence is held in such low esteem in the American judicial system that it cannot be introduced into court in criminal proceedings.) Police routinely refuse to reveal their source of a rumor about the forfeiture target; some policemen have likely invented anonymous informants to give them a pretext to take private property they covet. In Fort Lauderdale, Florida, police seized the $250,000 home of a dead man from his heirs who had cared for him while he was dying of cancer. The justification for the seizure? A "confidential informant told police that [two years earlier] the owner . . . took a $10,000 payment from drug dealers who used a dock at the house along a canal to unload cocaine. The informant can't recall the exact date, the boat's name or the dealers' names, and the government candidly says in its court brief it 'does not possess the facts necessary to be any more specific,' " as the *Pittsburgh Press* reported.[30] Although the police had no evidence that the deceased homeowner was involved in drug dealing, an informant's vague, uncorroborated assertion was sufficient to evict the owners and seize the property. While government agents can use hearsay evidence to justify a seizure, property owners are usually prohibited from offering hearsay evidence to support their claims.

Law enforcement officials are also seizing apartment buildings to punish the landlords for not eradicating drug dealing in the apartments. (If the same standard were applied to inner-city public housing projects, almost every public housing project in the country could be seized *from* the government; in 1993 Baltimore Mayor Kurt Schmoke blamed maintenance problems at one public housing project on drug dealers who refused to let city workers enter the buildings.)[31]

In Florida, the Dade County Commission revised county laws in 1989 to allow county officials "to demolish a nuisance building within 30 days after the police report drug activity at the property. Proof of drug activity is defined in the ordinance as one arrest."[32] The owner of a 36-unit apartment building in Milwaukee sought to placate the police by evicting ten tenants suspected of drug use, giving a master key to local beat cops, forwarding tips to the police, and hiring two security firms to patrol the build-

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ing. The city still seized the building because, as Milwaukee city attorney David Stanosz declared, "Once a property develops a reputation as a place to buy drugs, the only way to fix that is to leave it totally vacant for a number of months. This landlord doesn't want to do that."

The owner had encouraged the police to send undercover agents into the building—but the police claimed they were too short of officers.[33] In July 1992, several Cleveland landlords informed the police of drug dealing in their buildings; the city responded by quickly seizing the buildings and evicting all tenants, even in a building where drug-dealing occurred in a single apartment.[34] Apparently, the worse the police fail to control crime, the more power police acquire to seize law-biding citizens' property.

The Long Arm of Legal Plunder

Asset forfeiture is spreading like wildfire through the statute books. Some Islamic countries impose draconian penalties on men who approach and talk to women in public. In Washington, D.C., Portland, Oregon, and Hartford, Connecticut, police confiscate the cars of men who drive up and suggest a "capitalist act between consenting adults" to streetwalkers. Customs Service officials in Texas seized a $138,000 Lear jet after discovering that the owner had made a typographical error on paperwork he submitted to the Federal Aviation Administration.[35] (The FAA's usual response to such a mistake is to require the owner to correct the form.)

The Immigration and Naturalization Service has seized over 30,000 cars and trucks since 1990 from either people helping illegal immigrants enter the United States or construction companies transporting illegal immigrants to job sites.[36] Customs agents confiscated the $113,000 that a Vietnamese mother had collected from 20 families in the Seattle area to take back to Vietnam for humanitarian relief for their relatives.[37] (Customs officials pronounced the woman guilty of violating the Trading with the Enemy Act.)

A New Jersey mother's Oldsmobile was confiscated by police after they alleged that her son had used it to drive to a store where he shoplifted a pair of pants.[38] One New York businessman was forced to forfeit all of his gas stations because of a failure to pay New York sales tax.[39] A New Jersey construction company had all its equipment seized after state officials decided that the company was technically ineligible to bid on three municipal projects that it had already completed.[40] Suffolk County, New York, legislators considered a law in 1993 to allow local officials to confiscate the "cars, boats and planes used in connection with any misdemeanor."[41]

Asset confiscation programs are creating thousands of new police informants. The Justice Department routinely gives monetary rewards to individuals who report information or make accusations that lead to a seizure. The forfeiture program thus turns many airline ticket agents into conspirators with the government, since anyone who pays cash for an airline ticket stands a chance of being reported as a suspected drug dealer or an accomplice to drug dealing.

Perverse Incentives

Forfeiture is the biggest growth area in law enforcement partly because federal and local police agencies usually keep a large amount of the booty they seize. Federal Judge Richard Arnold noted in 1992 that some observers were questioning "whether we are seeing fair and effective law enforcement or an insatiable appetite for a source for increased agency revenue."[42] In Nueces County, Texas, Sheriff James Hickey used assets from a federal drug forfeiture fund to grant himself a retroactive $48,000 salary increase just before retirement ($400 a month for the previous ten years). The sheriff was indicted for embezzlement by a federal grand jury in August 1993.[43] Even internal government documents concede that federal agents have gone overboard: a September 1992 Justice Department news-

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letter noted, "Like children in a candy shop, the law enforcement community chose all manner and method of seizing and forfeiting property, gorging ourselves in an effort which soon came to resemble one designed to raise revenues."[44]

Prosecutors and legislators stack the deck against property rights. A 1990 Justice Department directive declared, "It is the Department's position that no advance notice or opportunity for an adversary hearing is statutorily or constitutionally required prior to the seizure of property, including real property."[45]

Professor Claudio Riedi noted in 1992 in the *University of Miami Law Review*, "Frequently, the government can meet its burden of proof by simply qualifying one of its detectives as an expert, who then testifies that a particular way of bundling money is typical for drug dealers. Standing alone, such testimony may be enough for a showing of probable cause, and may therefore entitle the government to forfeiture. In contrast, an innocent owner must adduce massive evidence to prove her case."[46]

The *Orlando Sentinel* noted, "Deputies routinely said bills in denominations of $1, $5, $10, $20, $50, and $100 were suspicious because they are typical of what dealers carry. But that leaves few alternatives for others."[47]

In most forfeiture court proceedings, it is up to the owner to prove that his house, his car, or the cash in his wallet was legally obtained—the government has no obligation to prove that the property is guilty. The fact that a government official makes an unsubstantiated assertion that a piece of property was somehow involved in illicit activity effectively transfers the ownership of that property to the government.

Asset forfeiture is proliferating in part because of a technicality in the law that allows the government to claim that it is suing only the item of property, not the property's owner. This is why forfeiture cases often have peculiar titles such as "*U.S. v. 1960 bags of coffee*," "*U.S. vs. 9.6 acres of land and lake*," or "*U.S. vs. 667 bottles of wine*." And since the Bill of Rights recognizes the rights only of citizens and state governments, not the rights of chunks of land or bottles of wine, there are almost no due process restrictions on government's attacks on property. A federal appeals court recognized this when it announced in August 1992: "We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes."[48] The citizen must show vastly more evidence to reclaim his property than the government did to seize it in the first place.

Government officials routinely refuse to return seized property even after an accused person has been tried and found innocent. The costs of suing the government to recover property are extremely high, routinely exceeding $10,000, and citizens must post a bond of up to $5,000 before filing suit. (The bond is required to cover the government's legal costs in having to defend against a property owner's efforts to reclaim his property.) The legal battles required to recover wrongfully seized property often take two, three, or more years. If the property seized is only worth a few hundred dollars, the person cannot possibly break even by suing the government. Most forfeiture statutes deny a private citizen any compensation for his attorney's fees when he successfully reclaims forfeited property.

No End in Sight

Although the number of asset forfeiture actions has skyrocketed in recent years, Justice Department officials apparently believe that the seizure bull market has only just begun. Cary H. Copeland, director of the Department of Justice's Executive Office for Asset Forfeiture, declared at a June 1993 congressional hearing: "Asset forfeiture is still in its relative infancy as a law enforcement program."[49] The Federal Bureau of Investigation announced in 1992 that it anticipated that its total seizures of private property would increase 25 percent each year for the following three years.[50] The Supreme Court marginally limited govern-

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ment forfeiture powers in several 1993 decisions, but Justice Department spokesman Mark Sakaley indicated that the decisions were not expected to have a major impact on forfeiture programs.

Mr. Copeland declared that asset forfeiture "is to the drug war what smart bombs and air power are to modern warfare."[51] Asset forfeiture basically allows government agencies to carpet bomb the rights of the American people. The Federal Eighth Circuit Court of Appeals complained in 1992 that it was "troubled by the government's view that any property, whether it be a hobo's hovel or the Empire State Building, can be seized by the government because the owner, regardless of his or her past criminal record, engages in a single drug transaction."[52]

Conclusions and Implications

Law enforcement in the United States is reverting back toward conditions existing in England before the Magna Carta, when rulers almost automatically seized all the property of any person convicted of a felony. Such seizures spurred English barons to force King John to limit his powers in 1215.[53] Unfortunately, some federal officials appear to cherish a pre-thirteenth century philosophy of government power. (A 1992 U.S. Solicitor General's brief quoted the Old Testament and praised forfeiture as an "ancient punishment.")[54] Asset forfeiture provisions presume that government officials should have the power to inflict economic capital punishment on private citizens for the breaking of scores of laws.

Many civil libertarians believed that the liberal Clinton administration and Attorney General Janet Reno would correct some of the most overt abuses in the forfeiture program. However, Reno has continually postponed substantive reform and even derailed a bipartisan liberal-conservative congressional effort to reform the forfeiture law. Instead, Reno's Justice Department has put forward its own "reform" proposal that has been derided as a "prosecutor's wish list" by forfeiture expert David Smith.

The asset seizure controversy redefines the relation between the State and the citizen: what pretext does the State need to claim that a citizen's property actually belongs to the State? Do people have a right to their property only until some "secret informant" tells police something bad about the citizen's use of his property? If Congress proposed to forcibly alter all private deeds and titles in the United States by adding a clause stating that the government acquires automatic ownership rights if any law enforcement official hears a rumor about a property's possible illicit use, the public backlash would raze Capitol Hill. But, increasingly, that is the law of the land. □

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3. Brief of the Institute for Justice in the case of *U.S. vs. James Daniel Good Real Property, et al.*, No. 92-1180.
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5. Interview with Steven Kessler, September 21, 1993. Kessler's study on forfeiture is titled *Civil and Criminal Forfeiture: Federal and State Practice* (New York: Clark, Boardman and Callaghan, 1993).
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22. Carol Bidwell, "Motives for Raid Questioned," *Houston Chronicle*, April 4, 1993.
23. Michael Fessier, "Trial's End," *Los Angeles Times Magazine*, August 1, 1993.
24. Daryl Kelley, "Block Challenges Critical Report on Malibu Ranch Raid," *Los Angeles Times*, April 9, 1993.
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26. Dennis O'Brien, "Prosecutors Want Veto of Forfeiture Bill," *Baltimore Sun*, April 18, 1994.
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THE FREEMAN
IDEAS ON LIBERTY

Building Code Blues

by James D. Saltzman

"The authority of government," wrote Henry David Thoreau, "can have no pure right over my person and property but what I concede to it." But the city of Houston has a different view, that individuals have no pure right over their property except what the government concedes to them. Consider the case of Leonard and Betty Leath.

In September of 1990, the Leaths purchased a dilapidated 47-unit apartment complex in Houston. During the next two years, they spent $260,000 to repair the building, planning to offer affordable housing to the low-income elderly. In early 1992 city inspectors found the Leaths' project "as secure as any other construction in the city."

However, later court evidence indicates that a city councilwoman did not want the low-rent apartment in her district. So in March of 1992, city inspectors issued the Leaths a stop-work order. For the next five months, city officials refused to explain to the Leaths' attorney why the rehabilitation would not be permitted to continue. And six months after the stop-work order, the city tore down the Leaths' building and sent them a demolition bill for $66,000.[1]

This tale about the Leaths illustrates the monstrous regulation that cities can impose on property owners through building codes, mandates for safety (and sometimes even for comfort) in new or existing construction.

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In other words, dangers flow from the political management of risk. When issuing and enforcing safety regulations, governments find it all too easy to seize more power over private property than is needed to ensure public safety; too easy to exploit this power for political purposes irrelevant to public safety; and much too easy to exercise this power in ways that actually undermine public safety.

Needlessly Higher Costs

The problem comes from conflicting incentives. Private owners, like the Leaths, benefit financially from improving their property. For the Leaths, that meant restoring the apartments to attract renters. On the other hand, public officials don't own what they control and lose nothing from unnecessarily increasing the cost of maintaining or developing property.

In fact, three federal commissions in the last 30 years have discovered that needless building code provisions have driven up the cost of housing. In 1968 the Kaiser Committee "found that some communities imposed excessive building codes to prevent the construction of low-cost housing, thereby denying local housing opportunities for lower-income groups." Similarly, in 1982 the President's Commission on Housing concluded that "unnecessary regulation of land-use and buildings has increased so much over the past two decades that Americans have begun to feel the undesirable consequences: fewer housing choices, lim-

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ited production, high costs, and lower productivity in residential construction."

The findings of the 1982 study reappeared in the report of another presidential commission in 1991: "Local building codes are often not geared to supporting cost-effective construction of affordable housing. They sometimes generate excessive costs by requiring unnecessarily expensive materials, unnecessary safety features, unnecessary building code requirements, or outmoded construction techniques."[2]

So efficiency must take a back seat to the whims of politicians and of building officials. In this system, even good-faith efforts to maintain or restore property can fall into a bureaucratic quicksand of confusing, senseless, and unfair procedures:

- In *The Death of Common Sense* (1995), Philip K. Howard tells how a married couple from Brooklyn spent several years renovating the kitchen and bathrooms of their brownstone. Even though they had satisfied all requirements for submitting plans and having periodic inspections, they were refused the closing document, a certificate of occupancy, because the family had been living in the home while renovating it. According to Howard, "[no] inspector, in all their visits, had ever told them of the rule."
- The city of Angleton, Texas, tried to make a homeless woman of Vivian Barnett, a 69-year-old widow and retired civics teacher.[3] Barnett was refurbishing her home and some vacant adjoining apartments when the city cut off her electricity and condemned the entire complex, threatening to demolish it. Incredibly, no inspector had even entered her property; city officials condemned it after only driving by it. Nevertheless, the city would not restore her power for several days, and she had to take the city to court to have her buildings declared safe.
- Dr. Jack Yetiv got stuck trying to rehabilitate a run-down apartment complex to provide low-income housing in Houston. Yetiv had already spent $200,000 clearing debris when the city stopped his project, claiming he didn't have the permits needed to continue. To get these permits, Yetiv had to have the city to approve his "cure plan," which the city at first falsely claimed Yetiv had failed to submit. Even after "finding" his plan, the city would not approve it until Yetiv got Houston's chief building inspector to give the property an occupancy inspection.

But the inspector wouldn't look at the property until the city removed its "administrative hold" on the complex. Then the city threatened Yetiv with daily fines unless he corrected numerous code violations. Yetiv had never before been told of these violations, even though city inspectors had visited his site almost weekly while his project was underway.

To complete his plans to house the poor, Yetiv had to take the city to court. According to *The Houston Press*, Yetiv's experience with the city revealed a "frustrating process that would discourage most people from going to the trouble of repairing a dangerous building in Houston."[4]

Weakened Incentives

Excessive regulation weakens the incentives to improve property. In recent years, the city of Houston has been toughening standards for renovating "dangerous" buildings. The result? "Rehabilitation by owners [of such buildings] has been cut from 1,099 units in 1992 to 184 in 1994,"[5] according to the Citizens' Housing Coalition of Houston.

As regulation tightens, production slows, becomes more expensive, or moves to a venue with fewer restrictions. In Houston, building code requirements inside the city make it less expensive to construct housing outside the city, in the unincorporated areas of Harris County.

In 1981, one Houston home builder testified to a federal committee that a "1,166 square-foot house built in the city will cost a buyer $3,300—or 5.5 percent—more than a similar house built in the county."[6] But in Houston, such arguments have fallen on political ears deaf to marketplace realities. One 1992 report cited a complaint by the Greater Houston Builders Association that "*90 percent* of single-family homes in the

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Houston area are built outside city limits" because of the city's "building code and its permitting process."[7] As regulatory costs mount, builders flee, restricting the housing supply even further and causing housing prices to rise even faster.

Special-Interest Regulation

But economic common sense hardly reigns in the adoption of building codes. Too often, codes are written and enforced not to serve the needs of consumers, but to appease the demands of organized pressure groups.

For example, building codes give local elites a powerful instrument for discrimination. A *Wall Street Journal* article from May 5, 1992, explained how. In Bell Gardens, California, a cadre of Anglo incumbents was accused of using "the petty enforcement of codes and other tools of activist government to try to remake the community," which meant driving out a growing Hispanic population.

One alleged method involved sending out city building inspectors to search low-income housing for code violations. These included such hazards as cracked driveways, scratched kitchen sinks, and smudged walls. As aggressive inspections increased, vacancy rental rates also rose among the largely Hispanic immigrant tenants "understandably wary of house searches." Meanwhile, the city acquired and sold condemned properties for upscale redevelopment.

Using building safety as an excuse to keep out "undesirables" is nothing new. In "Rediscovering the three decker house" (*The Public Interest*, Winter 1990), Howard Husock explained how New England city planning boards in the early twentieth century used fire safety as a phony rationale to check the spread of owner-occupied three-family houses, or "three-deckers." However, two observers from 1914 noted that "with stairways and piazzas on two ends of the house, it would be practically impossible for people to be burned alive—and thus far losses of life in three decker fires have been infinitesimal."[8]

So why did local governments oppose the three-deckers? According to Husock, the "reformers [who opposed three-deckers] were clearly uncomfortable with the market processes that were bringing immigrants into the mainstream of American life," which meant into the communities of the "reformers." Much to their chagrin, the three-decker houses provided a way out of crowded tenements for blue-collar immigrants, who could rent one of the flats in the building or even purchase the building, live in one flat, and pay the mortgage with the rent from the other two. However, at the behest of local leaders, cities passed ordinances to restrict or prohibit the three-deckers "because of the fire hazard their wooded construction and density was said to pose."

Just as a code can be strengthened to expel the poor, it can also be relaxed to indulge the well-connected. The safety of children is a frequent reason for toughening codes, but a March 15, 1995, article in the *Houston Post* noted "a pattern of stonewalling fire code enforcement" by the city's Fire Marshal to avoid inconveniencing certain constituents, including the local school district over code violations at "various . . . campuses."

The *Houston Chronicle* explained how the Houston Galleria shopping mall won a moratorium from the enforcement of fire code violations relating to the width of exits. The Astrodome got a similar exemption even though it had 30 percent fewer exits than required by the city fire code. Last December, the *Chronicle* reported that the Houston Museum of Fine Arts had been cited for building and fire code violations. MFA officials "balked" at the initial demands of officials. A compromise was later reached.

Undermining Health and Safety

But heaven help the small property owner who "balks" at the demands of city building officials. In fact, the financially weakest consumers of housing—minorities, the eld-

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erly, the handicapped—are the chief victims of municipal crusades to toughen codes. Overzealous laws for building safety only hinder the welfare of those least capable of absorbing the added costs of stiffer regulation. Poorer is not healthier.

In December of 1993, Houston beefed up its housing code, allegedly to discipline rich, irresponsible "slumlords" and to speed the demolition of crack houses. However, after monitoring over 200 dangerous-building hearings under the new code, the Citizens Housing Coalition of Houston reported that "the owners who are summoned to the [dangerous-building] hearings would not fit anyone's definition of a slumlord. They are generally older Houstonians, many are minorities, and many of them are sick or suffer from physical impairment."

The *Houston Chronicle* (Sept. 20, 1994) traveled to one of Houston's poorer neighborhoods and found the city threatening to demolish a partly fire-damaged house belonging to Lucille Huey, a 90-year-old woman living in another house she owned across the street. Even before she could make any repairs, the city's new housing code was forcing her to spend $1,000 simply to "resecure" the building. This meant Mrs. Huey would have to board up the property according to exacting city specifications, regarding such trivia as plywood thickness and the number of anchoring screws. Then she would have to repair her old house to bring the *entire* structure up to 1994 standards, another costly endeavor Mrs. Huey could ill afford.

Such a financial drain on poor people hardly leaves them healthier or safer. In other words, the thousands of dollars Mrs. Huey would have to spend on "securing" her house and bringing it up to current code simply reduces her outlay for necessities like food, medicine, and transportation.

The city of Dallas tore down the deteriorated home of Mrs. Agnes Gray, 81. A poor widow, she begged a year's delay to make repairs, but the city refused. They gave her $850 for moving expenses but billed her $1,998 for the demolition and offered her no replacement housing.[9] In effect, becoming "safe" cost Mrs. Gray her dwelling and a net liability to the city of $1,148.

Of course, excessive codes don't just victimize poor property owners; they harm poor renters as well. Recall how codes smothered the efforts of the Leaths and Dr. Yetiv to refurbish apartments for the poor. In the long run, rambunctious code enforcement leaves the poor with fewer and costlier choices for rental housing. As the 1991 federal report concluded, "[c]odes can create serious problems for those in need of housing, the poor and the homeless."

And as the poor have to spend more on housing, they are forced to spend less to feed and clothe themselves and their families. Or they must delay the purchase of a car and forgo desirable employment that's too far away. Or they must wait longer to move up to better housing or to a neighborhood with less crime. By driving up housing costs, onerous building codes make health and safety harder to acquire. As the economist Thomas Sowell notes in *The Vision of the Anointed* (1995), the "pursuit of safety in disregard of cost means a degree of sacrifice of economic prosperity—and economic prosperity is one of the key factors in longevity."

For the poor, building codes have even hindered safety by increasing their risk of homelessness. For example, cities have allowed safety mandates to wipe out dwellings with single room occupancy (SRO) units. "[T]ypically found in rooming houses and residential hotels," SROs are "one of the last remaining forms of affordable living space available to the inner-city transient and poor," according to a report in the February 6, 1992, issue of the *Wall Street Journal*. For example, the report explained that in Seattle, "half the city's [SRO] units (some 16,000) were destroyed for an urban redevelopment plan because they couldn't comply with a new fire code." San Francisco lost one quarter (1,247) of its SRO units between 1976 and 1985, yet "tightening fire and building codes . . . made the prospect of building new SROs impractical and unprofitable." Apparently, local governments believe that the poor are safer

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sleeping on the streets than in a building not up to recent codes.

Getting the Incentives Right

It's risky to leave building safety in the hands of government officials. Since they don't suffer the direct costs of their decisions, property controlled by them tends to be abused and wasted.

A better approach to building safety would eliminate the political overhead. That means a greater role for *private* risk management, in which the "regulator" has an incentive to promote the most safety at the lowest cost to the property owner. Thomas Sowell explains in *The Vision of the Anointed* how private insurance controls risk efficiently:

> When an insurance company seeks additional customers for its fire insurance, it must determine incrementally how much risk it is prepared to accept in order to get the additional business and how much it must condition its insurance policies on certain actions by the customer in order to reduce the risks of an outbreak of fire. Make the conditions too stringent and another insurance company gets the customer; make them too lenient and losses from fires will exceed premiums paid by the additional customers.

In his 1978 study, *Housing Costs and Government Regulation: Confronting the Regulatory Maze*, Stephen Seidel noted how the absence of "government promulgated building codes" in France led to the presence of privately promulgated building codes. For the French, "codes are written by the liability insurance companies. . . . To protect themselves against possible liability, those in the construction field obtain insurance which is made contingent on their compliance with minimum construction standards as established by insurance companies." In other words, developers don't want to incur liability damages and insurance companies don't want to risk their money on dangerous properties.

Neither do banks. On December 16, 1981, the *Houston Chronicle* explained how the unincorporated area outside Houston in Harris County lacked a government building code. Nevertheless, "lending institutions control[led] construction outside the city by reviewing the plans [themselves], employing outside architects to review the plans, and using outside inspection firms to monitor construction." Inspection firms, which employ qualified building engineers, are also available to smaller investors, such as homebuyers.

So getting the incentives right means allowing building safety to arise from the spontaneously coordinated interests of everyone with a financial stake in the integrity of the property. That includes the insurer, the lender, the builder, and the owner.

The first lesson of building safety is that individuals have a natural inclination to improve their property, a tendency government policies frequently undermine. Over 150 years ago, Henry David Thoreau made a strong moral argument for the right of people to govern what they own. His message makes good practical sense as well. □

1. The Leaths' story comes from Brian Wallstin, "Hammerin' Helen," *The Houston Press*, August 25-31, 1994, pp. 8-17, and "Out of the Soup," *The Houston Press*, November 24–30, 1994, pp. 6–7. The latter article tells how the Leaths won a $150,000 court settlement from the city and a release of the $66,000 demolition lien on their property.
2. "Not in My Back Yard," Removing Barriers to Affordable Housing, Advisory Commission on Regulatory Barriers to Affordable Housing, The Department of Housing and Urban Development, 1991, pp. 3-3 to 3-4.
3. John Tooth, "Woman fights City Hall—and wins; Jury declares home safe after Angleton condemns it," *Houston Chronicle*, May 7, 1994, p. A29.
4. This quotation and the rest of the story about Yetiv come from Brian Wallstin, "Nightmare on Peck Road," *The Houston Press*, December 8–14, 1994, pp. 6–7.
5. Open letter passed out by the Citizens' Housing Coalition of Houston at a news conference on September 19, 1994.
6. Jim Simmon, "Lack of zoning in Houston cited as lead to follow," *The Houston Post*, December 16, 1991.
7. Joan Denkler, "Preservationists voice concern over housing plan," *Houston Business Journal*, August 10, 1992.
8. Howard Husock, "Rediscovering the three decker house," *The Public Interest*, Winter 1990.
9. Craig Flournoy, "City's demolitions called unfair to poor minorities," *The Dallas Morning News*, February 12, 1995, p. 1A.

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A Little Erosion of Liberty

Landlords and tenants are not usually on the same side in the courtroom. But in Kalamazoo, Michigan, a group of tenants are standing up for their property rights and supporting their landlord against the City's inspection policy. It's a case with far-reaching implications that should concern every American.

When conducting building code inspections, the City of Kalamazoo demands that landlords provide access to rented apartments, even without tenant consent or a valid search warrant, thereby cutting tenants entirely out of the process. As a result, government inspectors are free to roam through bedrooms and bathrooms while apartment tenants are at work or out shopping.

The intrusive nature of Kalamazoo's inspection policy first came to light in 1994, thanks to the principled stand of Mr. Jerry Speedy. Speedy, the manager of Kalamazoo apartment complexes owned by the firm Edward Rose and Sons, Inc., was criminally charged with violating the City Housing Code when he refused to let inspectors into rented apartments without tenant consent. Fortunately, a judge last October dismissed the charges against Speedy but left the constitutional matter of the inspection program itself up for grabs.

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Most Americans have been brought up to believe that their home is their castle, the one place where government must unquestionably respect their privacy. Indeed, the Fourth Amendment to the U.S. Constitution firmly establishes the sanctity of private property rights by guaranteeing that the "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause."

It ought to be abundantly clear that in America, with rare exception, government officials cannot constitutionally enter a home without either the resident's explicit approval or a valid search warrant issued by a judge who has good reason to issue it. Perhaps the inspectors of Kalamazoo believe that renters don't have the same rights as homeowners or that end-running the Constitution is all right if it's for a tenant's own good. That brings to mind a remark attributed to philosopher Henry David Thoreau more than a century ago: "If I knew for certain that a man was coming to my home to do me good, I would run for my life."

To protect their rights, 13 tenants supported by the prestigious Institute for Justice in Washington, D.C., have filed a federal lawsuit challenging the constitutionality of the City's inspection program. Requiring that the City receive the consent of tenants or a valid warrant, it should be noted, does not nullify the Housing Code (even if good reasons exist to do so). Tenants can still let

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inspectors into their apartments if they wish, or contact the inspectors directly if they believe a Housing Code violation exists.

Kalamazoo officials claim that the building code inspections constitute only minor invasions of privacy and therefore they should not be subject to the same judicial scrutiny as police searches in criminal investigations. Scott Bullock of the Institute for Justice responds: "The invasion of privacy and the undermining of private property rights are no less severe when government officials enter a home to check the electrical outlets in one's bedroom or the pipes in the bathroom. Regardless of the nature of a government search, the Fourth Amendment protects an individual's home from unwanted government intrusion."

How Liberties Are Lost

The liberties of a free people, it should be noted, are seldom lost in one fell swoop. They're more often lost via "salami" tactics—one slice at a time. Thus, taking a stand against even a minor assault is critically important. Accepting without objection the little erosions of liberty can foster an avalanche later.

Bullock makes this very point when he notes that "Strengthening property rights against the encroachments of local government is a growing necessity. In New Jersey and California, private shopping mall owners must allow social activists onto their property to distribute leaflets and demonstrate. Until the U.S. Supreme Court stepped in (*Dolan v. City of Tigard*, 1994), a city in Oregon demanded that a business owner convert 10 percent of her land into a public bicycle path if she wanted a permit to expand her business. And in Minnesota, wetlands laws are being expanded to open privately-owned property to the public." The tenants in Kalamazoo, meanwhile, are seeing their property rights threatened merely because of their status as apartment dwellers.

If the tenants' case goes all the way to the U.S. Supreme Court, there's reason to hope for an affirmation of the Fourth Amendment. In recent years, the Court has declared that "individual freedom finds tangible expression in property rights" (1993), that "property rights cannot be relegated to the status of a poor relation" in comparison to other constitutional rights (1994), and that "the sanctity of the home . . . has been embedded in our traditions since the founding of the Republic" (1980). In 1961, the Court even ruled that a landlord cannot approve a search of a tenant's home without the tenant's consent or a warrant!

It may rankle a few bureaucrats, but nothing in the Constitution suggests that Kalamazoo or Peoria or El Paso or any other city is exempt from its provisions. □

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THE FREEMAN
IDEAS ON LIBERTY

Predatory Unionism

by Thomas J. DiLorenzo

Many economists have long viewed unions as essentially cartels of workers which collude to push their wages above free-market levels. As Texas A&M University labor economist Morgan Reynolds has explained: "Unions are fundamentally cartels—groups of producers with sectional interests diametrically opposed to those of consumers. Unions are labor OPECs" whose rallying cries have always been "take competition out of wages" and "take labor out of competition."[1]

Competition and the entry of new (and lower-priced) competitors are the bane of all cartels. Even the infamous OPEC oil cartel collapsed once American and other oil producers significantly increased their oil production and lowered their prices. Unions have always attempted to block competition from nonunion workers through special-interest legislation and regulation, and by committing acts of violence and intimidation against nonunion workers. For the entry of nonunion workers is just as devastating to a union cartel as a new lower-priced competitor is to a business cartel.

The purpose of all cartels is to raise prices above competitive levels and to redistribute income from consumers to cartel members. When unions successfully raise the price of labor above free-market levels, much of the employers' higher labor costs are passed on to consumers.

America's struggling private-sector unions, which today represent no more than 10 percent of the labor force, recognize that in order to increase union membership and, more importantly from the union's perspective, to increase dues revenues, they must devise new techniques to destroy the threat of nonunion labor in their industries. In the grocery industry in particular, unions have recognized that the key to increased unionization is a new definition of "market share": the share of a market that is controlled by unionized firms. If the grocery industry, for example, were 100 percent unionized, then there would be no competitive threat from lower-priced, nonunion grocery stores that would take business away from higher-priced, unionized stores by providing consumers better value for their money. This paper examines the implications of recent "corporate campaigns" in the grocery industry.

The Union Imperative to Raise Grocery Prices

It is instructive to listen to what union organizers themselves have said about their self-imposed imperative to either raise the prices of nonunion grocery stores or drive those stores into bankruptcy. Consider a speech delivered by Douglas H. Dority, the executive vice president and international director of organizing of the United Food and Commercial Workers International Union at a 1990 union organizers' conference.[2] The biggest problem facing the union, said Dority, is that "nonunion stores grew

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faster [during the 1980s] than we organized them" so that "the lesson of the '80s is market share."[3]

"We must educate our members about market share," said Dority, and explain to them the union's newly designed strategy for cartelizing the grocery market. The key point of advice offered by Dority was: "*When the unionized share of the grocery dollar declines in any geographic area, our ability to produce at the bargaining table is diminished. That is what happens when we fail to organize the nonunion competition.*" (emphasis added)

Dority compared the Washington, D.C., and Tidewater, Virginia, grocery markets, the former being about 90 percent unionized, whereas the latter is only about 10 percent union. The effect is a difference in hourly wages of "about two dollars," which leads to the second most important point, according to Dority: "*When a company expands its nonunion operations—in the same geographic area or elsewhere—it can better withstand a strike to achieve our members' bargaining objectives.*" (emphasis added)

In the eyes of union organizers the existence of nonunion grocery firms is a deadly force against their campaign to cartelize the labor market in that industry. The union imperative, therefore, is to increase "the unionized share" of stores in every market and, especially, to organize doublebreasted companies—ones that have both union and nonunion stores. This strategy, Dority says, represents "a sea change in union thinking."

Perhaps the biggest threat to union cartelization efforts in the grocery industry, according to Dority, are the low-priced "warehouse clubs" and "hypermarkets" which "we have shown we can hurt with picket lines and [bad] publicity." Another "very real threat" to the market share/cartelization strategy is "the nonunion chains—the Food Lions, Price Choppers, and Hy-Vees of our industry." "*Over the long run, we must either reduce these chains' market share . . . or we must put them out of business. There is no other option.*" (emphasis added) Low prices may be a "threat" to Dority's position as a union organizer, but they are a great benefit to consumers, especially lower-income consumers.

Other union executives in the industry have voiced similar sentiments. Joe Crump, the secretary/treasurer of the Grand Rapids, Michigan, local of the United Food and Commercial Workers Union (UFCW), stated in *Labor Research Review* that his union defines successful organizing in one of two ways: "either a ratified, signed collective bargaining agreement with a previously non-union employer or a curtailment of a nonunion operator's business, *including shutting the business down.* Neither of these outcomes will occur by relying on the NLRB."[4] (emphasis added) A self-congratulatory Crump then boasted that "after a three year struggle, the battle with [the nonunion] Family Foods is over. . . . The company went out of business."[5] Family Foods' employees lost their jobs and consumers in those areas where its stores had competed with higher-priced, unionized stores began paying higher prices, something this "labor leader" is most proud of.

Clearly, driving one's competitors out of business may be good for aspiring monopolists, but is bad for consumers and those workers at companies like Family Foods who lose their jobs. Low-income Americans will be hurt the most, as they always are when prices rise.

"Organizing is war," says Crump, and that means harassing nonunion employers and "costing them enough time and energy and money to either eliminate them or get them to surrender to the union."[6] Employers must be made to "pay for operating nonunion."[7] "If we can't organize [nonunion supermarkets]," says Tom McNutt, president of Local 400 of the UFCW, "the best thing to do is to erode their business as much as possible."[8]

Sometimes unionized grocery stores conspire with their unions to try to drive their lower-priced, nonunion competitors from the market. As Crump correctly points out, unionized employers "love to see their non-

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union competitors having such a tough time."[9] This kind of business/union conspiracy may be directed toward nonunion stores, but the ultimate victim is the consumer.

And union harassment campaigns (discussed in detail below) can bankrupt a grocery store more easily than most people might imagine, given that profit margins in the 3 percent range (as a percentage of sales) are common. As Crump instructs his fellow union organizers: "If a supermarket loses 10 percent of its customers, its profitability is probably eliminated."[10]

The Union Assault on Employee Freedom

The ultimate objective of "corporate campaigning" is to pressure the company to accept a union *without ever permitting its employees to vote on whether or not they want a union.* That is what Crump meant when he said that neither of his two top priorities as a union organizer—to either have a company sign a union contract, or go bankrupt—would ever "occur by relying on the NLRB" and its electoral certification processes. This is a stark admission that, at least in the grocery industry, unionization cannot succeed if employees are allowed to vote on whether or not they want a union. Extortion has replaced organizing.

A most telling document entitled "Developing New Tactics: Winning With Coordinated Corporate Campaigns," published by the AFL-CIO, describes to union organizers how "United Food and Commercial Workers Local 400 had tried for years to organize the Magruder's supermarket chain in the Washington, D.C., metropolitan area."[11] After the union picketed the stores and "informed the public" about the store's allegedly substandard products and labor practices, "Magruder's voluntarily recognized the union—without an NLRB [National Labor Relations Board] election" because it wanted to avoid "the threat of informational pickets and bad publicity."[12]

The word "voluntary" here is used in a most peculiar way. When one succumbs to threats and intimidation, which is what the corporate campaign against Magruder's was, one thinks of extortion rather than voluntarism.

Crump promotes this tactic by pointing to a kind of history lesson: in 1937 more than 3 million workers joined unions in the United States but "only 2,470 used NLRB elections as the vehicle to gain their collective bargaining rights. The rest employed 'other means.'"[13] By using such strategies, Crump advises, "you don't need a majority or even 30% support among the employees. A few people inside and outside are all that's necessary. . . . Fired employees are a great source of information."[14] Organizing employees can be "complex and unpredictable," says Crump, but "employers are simple and predictable—organize employers, *not* employees."[15]

He recognizes that "waging economic war on an unorganized company" might "turn employees against the union,"[16] but then advises union organizers to forget about that—employees' opinions need not matter. For "if you had massive employee support, you probably would be conducting a traditional organizing campaign" in which employees were permitted to vote on whether or not they wanted a union.[17]

Thus, the essence of the "corporate campaign" strategy is this: Unions cannot convince workers to join their union voluntarily through NLRB elections, so they intimidate and threaten to extort *employers* until they sign a contract with the union *without holding a union certification election.* Despite all the talk in union circles about "workplace democracy," such tactics are anything but democratic: they are designed specifically *to avoid the "inconvenience" of holding union certification elections,* which the unions know they will lose.

The "Threat" of Competition

A recent *New York Times* article about national competition in the grocery industry explains why unions are so intent on literally destroying nonunion grocery stores and why, if they are successful, this strategy will greatly harm American consumers. The ar-

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ticle contrasts grocery store chains in the heavily- unionized Northeastern states with those in the largely nonunion South and describes how Southern chains are expanding into the Northern states and providing new competition.

In a unionized store in affluent Westchester County, New York, "shoppers squeezed their carts through aisles cluttered with towers of unpacked boxes that blocked the goods on the shelves. Whole shelves yawned emptily, unstocked. Customers waited in lines as checkout clerks doubled as baggers. Spilled milk by the dairy cooler had not been cleaned up. The floors were littered with flattened vegetables and packing materials. . . . A clerk maneuvered a broom along the aisles, redistributing the litter instead of cleaning it up."[18] Much of the population of the North "has become inured to poor service" and many Northerners "put up with conditions that people in the South would not accept," observes a retail expert at Smith Barney.[19]

A supermarket run by the nonunion firm, Publix, in a middle-class Florida community "offered a startling contrast," according to the *Times*: "clutter free, wide-aisled, spotless" and with helpful employees.[20] Publix is part of a "revolution" that is "transforming the supermarket business in the South and West," the *Times* observes, where fierce competition is providing customers with superior service at competitive or lower prices. The Publix chain, for example, enjoys lower labor costs and "uses the tenets of aggressive management and employee ownership to create a culture that values efficiency and service."[21] The 64-year-old company has been owned entirely by employees, managers, and the family of the firm's founder, the late George Jenkins. (Employees become eligible to purchase stock after working there for one year.)

A 1993 survey of 10,000 readers of *Consumer Reports* magazine rated Publix the best supermarket chain in America over 23 competitors. The service is so good at Publix that the firm has had to advertise that its prices are competitive "because some customers think it is a luxury chain."[22]

Publix employees are paid bonuses tied to the revenues of the stores and can make as much as $300 extra during each 13-week inventory period. They are also not subjected to rigid work rules, such as the ones that exist in unionized supermarkets. In some unionized stores, "if the customer spills a bottle of jelly in the aisle, the rules might prevent a cashier from sweeping up, even if the cashier is idly sitting around with no customers."[23] It is these kinds of rules that have been so detrimental to other unionized industries, such as autos and steel, and are a plague on efficiency. That's why Publix executives recognize that a key to their (and their employees') financial success is a union-free workplace.

Flexible labor relations are a key to the company's efficiency, and such flexibility is rarely—if ever—found in unionized firms. Rigid job descriptions and restrictive work practices ratchet up costs and prices at unionized grocery chains, all to the detriment of the consumer. These higher costs and prices also threaten the job security of unionized employees who work for uncompetitive businesses, as auto and steel workers have learned all too well over the past 25 years.

Not surprisingly, the UFCW has launched a propaganda campaign against Publix, accusing the company of "gender discrimination" on the grounds that "too few" women are managers. But merely claiming that the number of female managers is "too small" does not prove that any discrimination has occurred, any more than claiming there are "too few" white professional basketball players proves that the National Basketball Association racially discriminates against white players. The union obviously hopes that mere repetition of the charge will harm the company's public image and, consequently, its sales.

The Propaganda Campaign Against Food Lion

Unions have not been successful in organizing the employees of companies like Publix or Food Lion because the great

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majority of the employees there do not want to be unionized. Having abandoned any pretense of organizing a union at Food Lion, the UFCW has waged a "corporate campaign" against Food Lion designed to force the company out of business or, at a minimum, to preserve the market share of unionized stores. The union assault on Food Lion provides a case study of the anti-consumer conspiracy known in union circles as "corporate campaigning."

One of the first tactics of the campaign against Food Lion was to persuade ABC News to air a story that promoted the outlandish union claim that Food Lion stores routinely sold rotten fish and ham, covering up the spoilage by bathing the meats in Clorox. The show was aired on November 5, 1992. "Diane Sawyer and her producers worked hand-in-hand with the union, and then did their best to pretend that it had little or no role in the broadcast," the *Washington Times* revealed.[24] Apparently, the union provided ABC's "Prime Time Live" with a roster of "disgruntled former employees" to interview, which the network did. The UFCW also gave an "undercover" ABC News reporter "minimal training and arranged for a phony letter of recommendation so she could get a job at Food Lion."[25]

The notion that *any* supermarket could get away with routinely selling ham bathed in bleach in the hyper-competitive grocery industry is absurd. If a grocer were so foolish as to attempt it, customers could certainly detect it, if the grocer's competitors did not do so first. The immediate result would be a loss of sales or even bankruptcy. No grocery chain (all of which, incidentally, rely on repeat sales more than most other businesses) could be as successful as Food Lion has been by selling rotten food that smells of bleach. Consumers are just not that easy to manipulate.

Food Lion was one of the fastest growing supermarket chains in the country before the ABC News segment, opening more than 800 stores from 1983 to 1992, with sales and earnings increasing by 22.5 percent and 23.3 percent, respectively.[26] But Food Lion's earnings fell by 55 percent in the fourth quarter of 1992 and its earnings for the first quarter of 1993 were 56 percent below the first quarter of the previous year. The company also reported that its net income declined by 41.6 percent for the second quarter of 1993 compared to the second quarter of 1992.[27] The chain closed 88 stores in 1994, laying off 1,300 full-time and 2,200 part-time workers.[28] The closing of these stores also diminished the degree of competition somewhat—at least in some markets—which can only harm the consumer. ABC apparently made no attempt to shoot film footage of some of the filthy and unsanitary supermarket environments of the unionized firms in the Northeast—including the New York City area, where ABC News is located—described by the *New York Times* as "supermarket purgatory."[29]

Union "Front" Organizations

The attack on Food Lion is so blatantly anti-consumer and so obviously a union scheme, that the union decided it had better set up a front organization to implement its "campaign." It established "Consumers United With Employees (CUE)," a front organization that has the same mailing address as the Food and Allied Service Trades, a subsidiary of the AFL-CIO. Also part of the organization are other, older union front organizations such as the National Consumers League (NCL). For years, the NCL has advocated such anti-consumer but pro-union policies as increases in the minimum wage, bans on "home work," and limitations on the hours teenagers may be allowed to work. The purpose of such front organizations is to fool the public into believing that the attack on Food Lion and other nonunion companies are not motivated by greedy unions, but by selfless and public-spirited "consumer advocates" united with "employees."

The first tactic employed by CUE was to issue a series of headline-grabbing press releases on February 4, 1994, claiming that it had conducted a "study" of Food Lion and had "discovered" the chain allegedly

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posed a threat to the health of babies through "sale of outdated infant formula at Food Lion Supermarkets."[30] In a letter to CUE members the same day, signed by Robert F. Harbrant, President of the Food and Allied Service Trades Department of the AFL-CIO "on behalf of C.U.E.," Harbrant urged CUE members to "contact your Congressional representatives and urge them to investigate this matter," and "contact your state and local representatives" also.[31] The organization also contacted the U.S. Food and Drug Administration and urged it to investigate Food Lion (but not any other grocery chain).

The "report" did not mention that "outdated formula" poses no health hazard; only that the manufacturer cannot guarantee the freshness of the ingredients after that date. A spokesman for the U.S. Food and Drug Administration tried to calm mothers who might have been frightened by the CUE "report" by announcing that "outdated baby formula doesn't pose a health hazard."[32]

The union also made no attempt to compare sales of outdated formula (and other items) at Food Lion stores with those of other grocery chains, especially unionized stores. There are bound to be "outdated" products to some degree at virtually every grocery store, not just at the nonunion ones. When asked why he didn't examine infant formula dates in unionized stores, Sean Cunniff, a CUE spokesman, pleaded poverty: "It's very difficult in terms of resources. . . ."[33]

CUE has specifically targeted Food Lion stores in Virginia with its "inspections," for Virginia is a state in which Food Lion is currently attempting to expand into the highly-unionized Northern Virginia market that is dominated by Giant Foods and Safeway. But a spokeswoman for the Virginia Department of Agriculture stated publicly that "in Virginia, Food Lion's overall compliance rate with state-inspection requirements is among the highest in the state."[34] Bob Gordon, director of the North Carolina Department of Agriculture's Division of Food and Drug Protection, called the "report" a "low blow" by CUE and said that "much has been made about nothing."[35]

The whole episode is foolish, says Gordon, because "any consumer can pick up a can or bottle and see the expiration date."[36] Gordon makes an important point: Even if infant formula—or any other product—is "outdated," the fact that it is indeed outdated is clearly written on the package!

A more comprehensive comparison of *all* grocery chains in the markets focused on by CUE found that *in every single instance*, the nonunion grocery chains performed *better* than the unionized ones in terms of the number of outdated products found on the shelves.[37]

Using Regulation to Reduce Competition and Raise Prices

A union organizers' manual published by the AFL-CIO informs its readers that "businesses are regulated by a virtual alphabet soup of federal, state and local agencies, which monitor nearly every aspect of corporate behavior."[38] This is a sad but true statement about the American workplace—it is awash in regulations, most of which are impossible for mere humans to understand, let alone comply with. One U.S. Department of Agriculture official candidly stated, for instance, that if all meat-inspecting regulations were actually enforced to the letter, there would be no meat-processor in America open for business.[39]

Unions—especially the UFCW—have taken advantage of this fact to impose regulatory costs on nonunion firms as another tactic in their corporate campaigns. As the AFL-CIO manual states, "unions can use the regulators to their advantage. An intransigent employer may find that in addition to labor troubles, there are suddenly government problems as well."[40] The manual then advises union organizers to catalogue the myriad rules and regulations that nonunion companies must comply with and try to determine if they are in total and complete compliance, a virtual impossibility for any

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business. If not, they should be reported by the union to the regulators, who are all too happy to be able to justify their jobs. If noncompliance is determined, press releases should be forthcoming so as to impose public relations costs on the nonunion firms as well. As the *Wall Street Journal* has stated, "unions are using regulatory laws as strategic weapons in their organizing and bargaining battles," the purpose of which is to "harass them in the marketplace and blackmail them into voluntarily recognizing unions without a National Labor Relations Board-sponsored election."[41] This tactic has worked in some cases already; in Salt Lake City, Utah, Smith's Food and Drug Centers, Inc. "voluntarily recognized the union at its Phoenix stores" when confronted with the possibility of protracted and expensive litigation instigated by UFCW organizers.[42]

UFCW organizer Joe Crump has recognized that because of the sheer size and complexity of federal regulation, "virtually all companies are wholesale law breakers. Even 'good' ones, even organized ones."[43] Crump knows that it is impossible for businesses to be in compliance with all laws and regulation at all times, even if they sincerely wanted to, for

> there's civil rights laws and wage-and-hour laws. Safety-and-health laws and right-to-know. Unemployment compensation and workers compensation requirements, and Social Security, plant closing and pension laws. There's public health and environmental laws. And at the local level, there's zoning and fire codes and various ordinances. At all levels, there are tax laws.[44]

The point here is that regulation is so out of control that any business person in America, at any one time, is most certainly "guilty" of noncompliance with at least some regulations. It is beyond human comprehension to possess knowledge of the tens of thousands of OSHA, EPA, IRS, and other regulations. The unions realize this—indeed, they lobbied for many of the regulations in the first place—and intend to use regulation as a tool for extorting "concessions" from nonunion employers, i.e., recognition of the union without a representation election. This is yet another reason why deregulation of labor relations—and of the economy in general— is sorely needed if the American economy is to prosper. Far from protecting the consumer, as they are in theory supposed to do, such regulations typically impose great harm on consumers and employees.

Conclusions

So-called corporate campaigns might best be described as the practice of predatory unionism. The purpose of the "campaigns," as stated by the AFL-CIO and its affiliates, such as the UFCW, is to use whatever means necessary—propaganda campaigns, abuse of the regulatory system—either to drive up the costs and prices of nonunion firms or to drive them into bankruptcy.

As cartels of workers, grocery unions cannot succeed if there are lower-priced (nonunion) grocery stores in the same market. Thus, it is imperative to them that, at the very least, grocery prices be raised at nonunion stores.

This kind of predatory unionism is not only anti-consumer; it is also anti-poor. Higher grocery prices impose a greater burden on lower-income consumers than on the more affluent. Informed consumers should take whatever unions and their front organizations say about nonunion businesses—in the grocery industry or elsewhere—with a very large grain of salt. □

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3. *Ibid.* The following quotations of Dority are all from this speech.
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5. *Ibid.*, p. 35.
6. *Ibid.*, p. 36.
7. Crump, p. 38.
8. Randall Bloomquist, "Tom McNutt: He's Built a Working-Class Empire on Innovation and a Willingness to Deal," *Regardies: The Business of Washington*, July 1988, p. 2.
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17. *Ibid.*
18. Glenn Collins, "In Grocery War, the South Rises," *New York Times*, April 25, 1995, p. C-1.
19. *Ibid.*, p. C-2.
20. *Ibid.*, p. C-1.
21. *Ibid.*, p. C-2.
22. *Ibid.*
23. *Ibid.*
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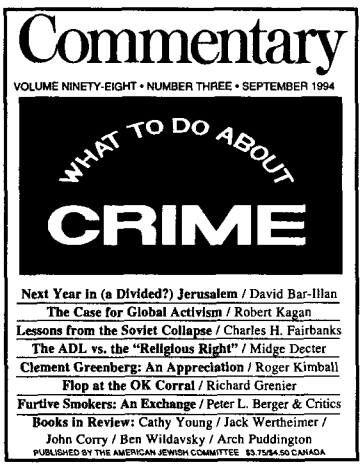
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THE FREEMAN
IDEAS ON LIBERTY

The Proper Scope of Democracy

by Tibor R. Machan

Whenever public programs are cut, those who have their benefits reduced protest loudly and those who feel for them offer compassionate support. Yet whenever public programs are enacted, little sympathy is extended to those whose incomes are reduced by higher taxes. It is contended that it's all part of our collective social life. After all, "we" have decided to fund Social Security, unemployment compensation, the national parks, public broadcasting, or whatnot, haven't "we"? Who cares that some of us suffer losses, that some of us now have to forgo benefits and experience reduced income, which can lead to reduced quality of education, recreation, home life, dental care, transportation safety, and cultural enrichment? None of this is supposed to matter because we have decided to impose higher taxes on ourselves to fund all sorts of public programs.

This is rank duplicity. If some propose to cut federal programs that leave open the possibility that states will not spend money on poor children's lunches, their actions are mean spirited, cruel, and morally insidious. But if others decide to increase taxes to fund Public Broadcasting or the National Endowment for the Arts or farm supports, we are told that this is just the way democracy works. All those who suffer the consequences of higher taxes have no reason to complain. "We did it to ourselves, so we have no right to fuss."

Why is it acceptable to violate the rights to liberty and property of millions of individuals when the one group of us decides to do this, but unacceptable to reduce the benefits of people when a somewhat different group of us decides to do that? Why may the choices of individuals be ignored and thwarted by democratic decision-making, but not the feelings and lot of others hurt by the same process?

Most people who talk of democracy in this bloated sense—wherein everything is subject to democratic decision-making—like it only when it supports their own agenda. It is fine to use democracy to rob the rich or yuppies or drinkers or smokers—it makes it valid public policy instead of theft. But if the poor or artists or educators or auto workers are the targets, then suddenly democracy is an exercise in meanness!

The reason for this duplicity is that democracy alone is never enough for forging public policy. There must always be some specification of the goals for which democracy is appropriate. It isn't enough to have a democratic process—it can lead to results of widely different quality. Sometimes the majority does right, sometimes wrong. And the task of political theory is, in part, to identify those areas of public life that should be subject to democratic decision-making.

What are those areas? And why are they the ones?

Whether alone or with his fellows, an

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individual may never act in certain ways toward other human beings. In particular, no one may take over someone else's life. This is true whether or not that other person's life is fortunate, well to do, talented, accomplished, beautiful, accepted by others, rewarded.

Taking over another's life entails theft, robbery, assault, kidnapping, murder, battery, rape, and other forms of aggression. And the fact that the numbers of those who do such things (via their representatives or hired thugs) are large or even constitute a majority makes no difference. It is wrong to steal on one's own as well as with the support of millions. It is wrong to enslave, to place others into servitude when they refuse, no matter whether the enslaver is in the minority or the majority.

Nor can majorities authorize their political representatives to carry out such deeds, even if they do it indirectly, by threatening those whom they would rob, steal from, kidnap, assault, or whatever, with aggressive enforcement at the hands of the police. It is wrong, then, even for the government of a representative democracy or republic, to carry out such deeds. Having done it with democratic "authorization" makes it no more right than if there had been no such authorization. There is simply no moral authority for anyone to delegate to another such powers since one doesn't have them in the first place. A government that is supposed to govern with the consent of the governed can only do that which those who give their consent have the authority to do in the first place!

All participants in the debate admit this, more or less directly. This is why even when people vote in one party, members of the other party claim that what their opponents do is wrong. They argue their case in the various forums of the media and the government itself. So they clearly believe that what the democratic process produces is not the end of the story. Even if a law passes, some will call it heartless, unkind, lacking in compassion—or, alternatively, burdensome, confiscatory, impeding productivity, or encouraging sloth. The fact that such legislation was brought about by way of the democratic process—"we" did it, so it's OK, a matter of society's collective will—is never adequate justification. The violation of the rights of individuals is no less justified by democracy than is collective callousness.

What *can* be done democratically without violating the rights of individuals to their life, liberty, and property? The answer is quite simple. We can elect our political representatives democratically, and decide who should guard over our rights and liberties. The rest is supposed to be done by means of voluntary conduct, not politics.

Once members of a society learn that moral principles and individual rights cannot justly be violated by the democratic process, they also learn that when the proper thing must be done, it has to be done by choice, free of coercion. Help to the poor and needy—as well as to those whose works of art, science, or pedagogy may not enjoy sufficient demand to sustain it as a market phenomenon—should be given at the initiative of the free citizen, via charity, church, philanthropy, and fund-raising. Democracy is no excuse for abandoning basic principles of human social life. When people make it so, that's when democracy has overstepped its proper boundaries. □

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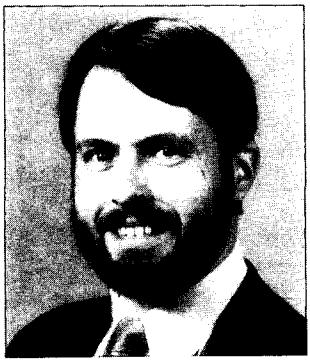
Customer Service, Government-Style



One of the defining characteristics of denizens of the nation's capital is their belief that government "serves" the people. This attitude naturally leads to much concern, particularly among the "good government" crowd, for government efficiency. Never mind whether government should be doing one job or another—it should be doing it *effectively*.

Indeed, there is nothing so irritating to the process-minded than someone attempting to put substance before "good" government. Consider the inside-the-Beltway gang's opposition to tax cuts. Some critics are forthright: the money would be better spent on social programs or used to shrink the deficit. Others, however, worry that reducing taxes would, horrors!, burden the IRS and *create more paperwork for taxpayers*. "People will hate the Internal Revenue Service when it's Congress's fault," said Cynthia Beerbower, Deputy Assistant Secretary of the Treasury for Tax Policy. "People are going to just freak out."

For instance, the IRS figured that the proposed cuts in the capital gains tax would add seven lines to Schedule D. A 33-line Schedule W would be necessary for a credit to reduce the marriage penalty. Medical savings accounts would require a two-page form, And so on.

The contention that taxpayers would prefer not to have an option of filling in a few extra lines in order to keep more of their own money is dubious enough. In any case, there is something, well, curious, about IRS officials professing their concern about taxpayer paperwork. Especially since the IRS spent months preparing to carry out more than 150,000 excruciatingly painful audits as part of the Taxpayer Compliance Measurement Program. The TCMP requires that taxpayers prove every line on their return—by producing a marriage license for their spouse and birth certificates for their kids, for instance. Preparing for such audits, last conducted in 1988, can take days. Naturally, taxpayers, who are targeted at random and not for cause, aren't compensated for their time. The psychic pain is even worse. One doctor calls the process "an autopsy without the benefit of dying." Last year the agency put the TCMP on hold, but only because of budget cutbacks, not concern over taxpayer burdens.

Yet the IRS seems to genuinely view itself as an organization of, by, and for the taxpayers. For instance, Commissioner Margaret Milner Richardson cheerily announced that "The Internal Revenue Service has embarked on several major initiatives that will improve our service to you, the American taxpayer."

We all like to be served, but exactly how does the IRS "serve" us? By taking our money to pay the bills run up by politicians in Washington. The IRS unabashedly seeks to instill fear in people across the land, lest someone think for even one minute that his money would be better spent by him than the government. If anyone has the temerity to act on that belief, the IRS will cajole, threaten, and penalize. This is "service"?

Well, yes, according to Ms. Richardson. "The National Performance Review [NPR], chartered by the President and led by the

Mr. Bandow is a Senior Fellow at the Cato Institute and the author of The Politics of Envy: Statism as Theology *(Transaction).*

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Vice President, conducted an extensive review of the Federal government. Its purpose is to ensure a government that works for people." Which people? The customers, explained Commissioner Richardson.

The customers!? Yes, indeed. According to the Commissioner: "The NPR recognized the Internal Revenue Service as a leader among government agencies in customer service, but challenged the IRS to make even more progress toward customer service, with emphasis on quality, fairness, and efficiency. Improving customer service is central to the job of reinventing government to make it work better and cost less." Happily, the "IRS accepted the NPR's challenge. Our plans for customer service are a major step toward making better IRS customer service a reality."

Normally no one could complain about a business that tried to make customer service its most important attribute. But the term "customer" implies voluntariness. A Wal-Mart customer shops there of his or her own accord. No one files with the IRS because he wants to. Taxpayers are "customers" of the IRS like convicts are "customers" of prisons.

Nevertheless, Ms. Richardson emphasized that she was serious. "I want you to know that the 'S' in IRS represents a commitment to serve you. We intend to meet your needs and expectations as taxpayers and as customers. If the service you receive from the IRS does not measure up to our Customer Service Standards, please let us know." Well, sure. Taxpayers—er, customers—have no reason to complain so long as IRS agents—er, sales associates—smile as they seize one-third and more of people's earnings. And as long as auditors—er, fiscal engineers—are efficient, customers shouldn't fuss.

Perhaps what is most amazing about the Commissioner's sentiments is that they seem genuine. As such, they help demonstrate why the gulf separating Washington from the rest of America is so wide.

Another bureau that has enthusiastically embraced Vice President Gore's NPR initiative is the Agency for International Development. AID officials proclaim that their bureaucracy has been reinvented and are now fighting a scorched-earth campaign to defeat attempts to either eliminate their agency or cut back the so-called foreign aid programs which they administer. At some level, of course, it is better for taxpayers that AID not lose a lot of money through administrative waste, corruption at home and abroad, and so on. However, far more fundamental than AID's efficiency or "service" level is whether its programs make sense. Which is precisely the issue agency officials prefer not to discuss.

Enthusiasm for process over substance afflicts more than just incumbent public officials. Commissions (National Commission on the Public Service), academic institutions (Harvard's John F. Kennedy School of Government), foundations (Carnegie), and other groups (Center for Excellence in Government) have all arisen from time to time to argue, in the words of the Center's Mark Abramson, that "whatever government does, it should do well." Most recent in this long line of "efficiency über alles" is Action, Not Gridlock!, which surfaced in Washington in 1994 to issue a slew of press releases denouncing government gridlock, particularly the Senate filibuster and its role in blocking a vote on health-care reform. "Together we represent a wide variety of political views, but we share a common belief in democracy and in its most central principle—the principle of majority rule," explained former Senator Barry Goldwater, a member of Action, Not Gridlock!

But majority rule puts process before the far more important substance. Even if a majority of people want to nationalize the medical system, they have no right to do so. Nothing in the Constitution gives government the authority to dictate how 250 million Americans will receive health care. And for Washington to attempt to do so would be sheer madness.

It has long been said that the rich are different than everyone else. So are members of the Washington elite. They really believe that the government equals the people. Which is reason enough for average people to keep a close eye on elected officials, appointed bureaucrats, and most everyone else in Washington. □

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January 1996

Ruinous Litigation

In Glendale, California, a couple recently filed a malpractice suit against a church, alleging that incompetent pastoral counseling had led to a suicide. The case was dismissed in the end because the ministers had taken no money for their counseling. But it also suggested that church-sponsored counselors who charge fees may become the targets of such suits. In the future they will need malpractice insurance.

Everyone, it seems, is suing. Workers are bringing suits against employers, customers against businessmen, tenants against landlords, clients against architects, engineers, and attorneys, patients against their doctors, students against their teachers. In just six years federal product-liability suits alone have more than doubled, now exceeding 10,000 every year. Last year, even the weather bureau was sued for having failed to predict a storm.

The American insurance industry is suffering the worst losses since 1906, the year of the San Francisco earthquake and fire. In reaction, it is becoming highly selective in deciding whom and what it will cover. Moreover, it is raising its rates to unprecedented levels that are jarring all other industries. Many business firms, along with individuals, professional partnerships and government agencies, are suffering an insurance crisis. Property, casualty, and liability policies are outrageously expensive or are simply unavailable. Even Lloyds of London, having suffered staggering losses on its business dealings with American clients, is reluctant to deal any more with American insurers.

Huge malpractice suits and staggering insurance premiums are threatening health care. The industry now pays over $2 billion in malpractice insurance, which visibly contributes to the high cost of medical care. One in every five doctors was sued last year, and can expect to be sued this year. The average award, according to Jury Verdict Research of Solon, Ohio, climbed to $840,396. Consequently, doctors practice "defensive medicine," spending some $15 billion to $30 billion on lab tests and x-rays that are unneeded but deemed necessary for possible malpractice suits.

The rampant increase in insurance costs is changing the tenor of the medical profession. Rather than pay higher and higher insurance bills, some physicians are limiting their practice to relatively safe fields, like general practice or dermatology. Some are retiring early, others are abandoning their specialty altogether. Some are moving from high-risk areas to areas affected less by the litigation mania. Some 25 percent of urban obstetricians have left the city or stopped practicing their profession, another 25 percent plan to stop soon. The effects are obvious: health care in high-risk areas is declining significantly and patients' health-care costs are rising rapidly. The quality of health care is declining in reaction to inordinate cost.

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It is futile to search for a scapegoat for this liability and insurance dilemma. It is fruitless to blame patients for turning into "adversaries" eager to sue. The people are not out "to get" their doctors. It is absurd to make lawyers the favorite scapegoats, to deride them as opportunistic parasites preying on the fears of patients and pocketing the lion's share of the awards. Attorneys are no worse than their clients without whom they have no case. Similarly, it is foolish to conclude that every doctor is careless and incompetent. To search for an explanation of the malpractice insurance crisis is to seek for changes in social mores and economic doctrines that distinguish contemporary Americans from their forebears.

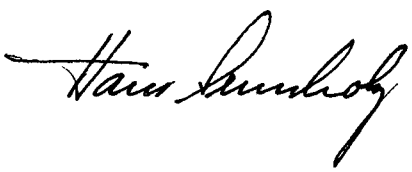
Under the influence of liberal political thought, Americans now live by political power and economic entitlement. They are convinced that political power reigns supreme in human affairs, that government as agency of this power can create income and wealth, provide knowledge and education, and care for the sick and dying. Most Americans now hold to a philosophy of economic entitlement that makes government the arbiter, regulator, and provider of last resort. In the field of health care, the entitlement doctrine has given rise to "legal medicine" that is characterized by government responsibility in medical matters, by federal and state rules and regulations, and employer obligations and patients' rights. Legal medicine with its myriad of rules and regulations about entitlement affords countless opportunities for litigation.

Most Americans have come to think that they are morally entitled to transfer benefits just because they are Americans. They believe in "human rights," which they interpret to mean political entitlements created by Congressional vote and defined by bureaucratic edict. They advocate political rights that take income and wealth from some people and give them to others; they call this the supremacy of "human rights" over "property rights," which in reality means the supremacy of political might over human right.

The entitlement ideology is a transfer and redistribution ideology that is relentlessly pressing its case in the halls of politics and the courts of law. It is confrontational in design and intent, seeking to benefit some people at the expense of others. Entitlement battles never end; they rage in every election and every session of Congress. They are heard in every court of law that is called upon to referee the entitlements.

A society that elevates economic entitlement to its guiding maxim not only breeds social conflict, but also fosters confrontational mores that permeate all walks of life. The confrontation is rather virulent and painful wherever the claims of beneficiaries clash with the complaints of the victims. It is loudest in service industries catering to millions of beneficiaries jealously guarding their rights. After all, entitlements springing from conflict and breeding conflict create classes of victims as well as victors. They give free rein to distrust and suspicion and openly invite litigation between the classes.

The malpractice crisis that is touching the quick of the professions and the product-liability crisis that is crippling several industries reveal a moral crisis that is putting all free societies in jeopardy. They manifest a disease which, in the end, is likely to give rise to a political and economic command system. For the present, they offer a panoramic view of things to come, of federal and state legislation and regulation, patients' rights and doctors' duties, of demagogic politics and ruinous litigation.



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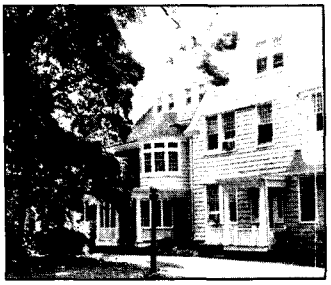

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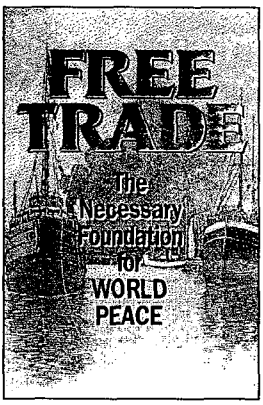

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THE FREEMAN
IDEAS ON LIBERTY

The Business-Ethics Quagmire

by Karol Boudreaux

Under pressure from accreditation agencies, business schools have begun requiring a class in "business ethics" for undergraduate business majors and MBA students. The ostensible purpose is to familiarize students with potential ethical dilemmas common in the business world.

Is the course necessary? Some critics of professional ethics classes bemoan the fact that schools require such courses. "What does this say about the moral fiber of our society?" they ask. Well, perhaps it says that young people receive less training in ethical standards from their families, places of worship, and peers than they received in the past.

Acceptance of the premise that students typically receive insufficient exposure to moral ideas outside the classroom may diminish one's aversion to business-ethics classes. Some ethics training is preferable to no ethics training; thus, schools arguably should offer such courses. But an important caveat must be added: training in business ethics is preferable to no training only *if* what students learn is (a) cost effective, and (b) rational.

I accept for purposes of this essay that instruction in business ethics is at least potentially cost effective. That is, I assume that the benefits to students of taking an ethics course are potentially greater than the benefits available from other ways they have to spend this time—such as taking an additional class in statistics or managerial economics. Whether or not this potential benefit is realized depends, ultimately, on the quality of instruction. And the quality of instruction in a business-ethics class depends largely on the quality of the business-ethics textbooks available to instructors.

Unfortunately, virtually all business-ethics textbooks are commonly driven by a virulently anti-business agenda. These textbooks are inherently irrational and even downright harmful.

Business Ethics: Into the Quagmire

The concept underlying most business-ethics textbooks is straightforward: self-interested behavior leads business people to do the wrong thing. Moral rules, in contrast, require individuals to voluntarily restrain their self-interested behavior, promote cooperation, and make society better off. Therefore, if students are exposed to the evils of greed and told how to behave unselfishly by textbook authors, students will supposedly be better equipped to resolve the countless ethical dilemmas they will face in the business world.

Here's where the trouble begins. Notice that the holder of the keys for unlocking the mysteries of right and wrong are business-ethics "experts," in particular, the people who write business-ethics textbooks. Oftentimes these authors say very sensible (if obvious) things, such as cautioning students against lying and theft on the job, and

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advocating decent treatment of employees and co-workers. Too often, though, these textbook authors say things that are much less sensible.

An examination of one popular business-ethics textbook helps illustrate the sad state of these books. In discussing the nature of moral rules, Manuel Velasquez, the author of *Business Ethics: Concepts and Cases*, claims that:

> [moral standards] are concerned with behavior that can seriously injure or seriously benefit human beings. The moral norm prohibiting price-fixing, for example, rests on the belief that price-fixing imposes serious injuries upon consumers; whereas the moral principle that employees have a moral right to collective bargaining rests on the belief that this right protects a critical interest of employees.[1]

Mr. Velasquez makes the seemingly inconsistent assertion that price-fixing by employers is immoral, while employee price-fixing through collective bargaining is moral. Accept for argument's sake that price-fixing by producers harms consumers; Velasquez is oblivious to the fact that legally protected price-fixing by workers has the same effect. Velasquez's assertion displays a bias in favor of unions and against producers. Further, it is built on the unsubstantiated Marxist belief in the irreconcilably opposed interests of employees and employers.

Unfortunately, this assertion is not an anomaly. Consider Velasquez's discussion of multinational firms: "Environmental laws, for example, which can ensure that domestic companies operate in the responsible manner that a country deems right for its people, may not be effective constraints on a multinational that can simply move—or threaten to move—to a country without such laws." (p. 21)

There are serious problems with this idea. Put aside the question of whether or not environmental laws really reflect majoritarian desires. Mr. Velasquez is worried that multinationals will relocate to countries where people value environmental protection less highly than do people in the United States. Is this really a moral or economic problem? Suppose Nigeria "deems right for its people" a level of environmental protection lower than that mandated by U.S. standards in order to encourage economic growth and reduce poverty. Can U.S. citizens ethically question Nigeria's decision? Is condemning more Nigerians to dire poverty really moral?

Furthermore, what right do some citizens have to restrict other citizens' ability to move to a "dirtier" country to take advantage of whatever benefits may be derived from being there? Velasquez is apparently unaware that environmental protection is costly, that poor countries must inevitably make trade-offs between some types of environmental protection and development, that private foreign investment might actually help poorer countries by giving their citizens greater access to wealth, and that wealthier countries can better afford to clean up their environments. Apparently, when ethics is involved, problems of scarcity and the necessity of tradeoffs disappear.

By implying that moving to "dirtier" countries is unethical, Velasquez suggests that companies should not make decisions that lower costs. Thus, it is not surprising that Velasquez also questions the morality of multinationals that relocate to take advantage of lower wage rates abroad. Yet he fails to ask an obvious question: if Sally works for Joe and earns $20,000, and if Lisa offers Sally $30,000 to do the same work, is Sally violating her ethical duties to Joe by changing jobs? How many people would answer "yes" to this question? Probably not very many. If companies can't shop for labor, why should labor be able to shop for better employers?

Similarly, Velasquez would probably not object to a consumer shopping for the best deal when buying a TV. The consumer might go to a no-frills discount dealer to get her TV, or, if the consumer chose, she might instead go to a store that provides great customer service—for a price. Would Velasquez favor limiting the ability of the consumer to go to the cheap store, where the "environment" is less pleasant? After all,

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consumers who choose the discount dealer may harm workers in the fancy store.

Here are a few other examples of the illogical, anti-market "thinking" common in Velasquez's Business Ethics:

> [P]erfectly competitive free markets impose no restrictions on how much wealth each participant accumulates relative to others, so they ignore egalitarian justice and may incorporate large inequalities. . . . People who have the money to participate in markets may consume goods (such as food or educational resources) that people outside the market, or those with very little money, need in order to develop and exercise their own freedom and rationality. (p. 183)

Presumably, wealth redistribution is the solution to this problem. However, such redistribution necessarily involves infringing the freedom of the person who has the wealth. Why is the freedom of the wealthy less valuable than the freedom of others?

The implication in the quotation above, and in many other parts of this book, is the Marxist notion that business wealth (and much personal wealth) is created only by exploiting the working class. Velasquez gets even worse:

> Minimum wage laws, safety laws, union laws, and other forms of labor legislation are used to protect workers from exploitation. (p. 160)

Velasquez does not mention that minimum-wage statutes reduce employment opportunities for young and unskilled workers, or that labor-union support for minimum-wage laws may be prompted by an interest in decreasing the amount of cheap competition union workers face. Contrary to Velasquez's claim, it is legislation such as minimum-wage statutes that exploits the most vulnerable members of society. Who's more ethical: politicians who support laws that harm the poor, or employers who provide jobs for unskilled workers?

As suggested above, the level of understanding displayed by authors of ethics textbooks concerning environmental issues can only be described as simple-minded. Consider the following assertion by Velasquez:

> [P]ollution always imposes "external" costs—that is, costs for which the person who produces the pollution does not have to pay. (p. 239)

This statement would certainly be news to Exxon Corporation, which has paid hundreds of millions of dollars in compensation for the Valdez accident, or to Union Carbide, which likewise has paid hundreds of millions of dollars to compensate victims of the Bhopal incident in India which, as it turns out, was probably caused by regulatory snafus.

The candidate for the "most misleading" statement of the book must be the following:

> In a pure free market system, there would be no constraints on the property one could own and what one could do with the property one owns. . . [s]lavery would be entirely legal, as would prostitution. (p. 141)

Of course, slavery is a denial of property rights, whereas the free market extends and promotes property rights. Furthermore, the slave is thrust into his (or her) position involuntarily. Slavery is not the same thing as indentured servitude. In the latter case, someone agrees to give up personal freedom temporarily, presumably in exchange for something (money or goods) that the indentured servant values more highly. It is perhaps true that a free market would allow people, if they made this decision of their own free will, to become the temporary servants of others. But no one could force another person to become a servant or slave.[2] The basis of the market is voluntary, consensual transactions; slavery is inherently nonconsensual. Velasquez's use of this crude scare tactic is disingenuous.

I could go on but you probably get the point by now. Such textbooks as *Business Ethics* portray the free market as an evil, scary place full of evil people who will do anything to make a buck. In Velasquez's world these evil exploiters suffer no ill consequences, such as loss of business, as a

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result of their wicked actions. Most importantly, Velasquez and other authors of these texts believe that the best way to overcome the forces of evil present in the market is through government regulation. Arguments that the market itself can police against companies that act maliciously are brushed aside as naive:

> Market failures, characterized by inadequate consumer information and by irrationality in the choices of consumers, undercut arguments that try to show that markets alone can provide adequate consumer protection. (p. 277)

> Instead, consumers must be protected through the legal structures of government and through the voluntary initiatives of responsible businesspeople. (*id.*)

It is silly and misleading to present the business world as devoid of morality. Business people have tremendous incentives to "do good": cheating and lying ruin reputations, treating workers poorly leads to reduced productivity, disregarding safety may result in product-liability claims, and abusing suppliers wrecks profitable relationships. Velasquez recognizes none of this.

Conclusion

Of course, some business people make mistakes and commit breaches of morality. It is valuable for students to investigate these mistakes and to discuss the best ways to avoid them. To argue that a free-market system would lead to perfect morality is foolish. But to argue that the government is able to prevent selfish behavior, through legislation and regulation, is even more foolish. After all, government is full of the same kinds of self-interested people as those who populate the market. Advocates of the free market do not claim that the system is perfect. Rather, they argue that the market does a far better job of promoting human happiness, morality, and justice than do alternative political systems.

The problem with many classes in business ethics is not the ethics per se. Rather, the problem is that most business-ethics textbooks espouse a naive socialism: those with "sufficient" resources should share these resources; egalitarianism is always the more important end than justice, freedom, and prosperity. Velasquez and his fellow business-ethics authors believe that self-interest inevitably leads to awful outcomes, and that government officials, who have only pure motives, are best able to constrain this behavior. Given the growing importance of business-ethics courses in business schools, there is a dire need for new textbooks written by authors who are in touch with economic and political reality. □

1. Manuel Velasquez, *Business Ethics: Concepts and Cases*, 3rd ed. (New York: Prentice-Hall: 1992), p. 12. Subsequent page references are noted parenthetically.

2. Richard Posner, in his 1995 book *Overcoming Law* (Cambridge, Mass.: Harvard University Press), notes that in the Netherlands it is illegal for any firm to fire a worker (except under exceptional circumstances). Further, it is illegal for workers to quit! Is this desirable job security or slavery?

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THE FREEMAN
IDEAS ON LIBERTY

Freedom and Happiness

by Bryan Caplan

"[F]reedom is undoubtedly the indispensable condition, without which even the pursuits most congenial to individual human nature can never succeed in producing such salutary influences. Whatever does not spring from a man's free choice, or is only the result of instruction and guidance, does not enter his very being, but still remains alien to his true nature; he does not perform it with truly human energies, but merely with mechanical exactness."

—WILHELM VON HUMBOLDT,
The Limits of State Action

1. The Varieties of Human Welfare

Let us begin with a thought experiment inspired by Charles Murray.[1] Imagine that you discovered you would be unable to raise your child yourself, and would have to entrust him to the guardianship of someone else. Naturally, your concern with the child's happiness would be paramount. But what does that actually mean? Your first concern would be for the child's material well-being; but would that be the only consideration? What if certain wealthier guardians would not instill the same strength of character that other parents of more modest means would provide?

The point here is that human welfare is more than *material* well-being. When we compare the ability of markets versus government to advance human welfare, we should consider not just their ability to produce consumer goods. It is at least as important to examine the broader effects of these institutions on the human personality.

Mr. Caplan is a graduate student in economics at Princeton University. The essay was awarded first prize in the 1995–1996 Olive W. Garvey Fellowship competition (see page 3).

2. Economic Well-Being

The connection between markets and economic well-being is best illustrated empirically. The recent histories of Germany and Korea provide the equivalent of two controlled experiments demonstrating the link. In both cases, what scientists would call "exogenous" forces suddenly split homogeneous nations into two parts. In both cases, one government adopted market-oriented policies, whereas the other imposed a rigid state-run economy. In both cases, the living standards in the more capitalist nations became so far superior to those in the "control" nations that ruthless emigration restrictions were imposed to prevent a steady population drain.

Korea and Germany offer the best experiments in alternative economic systems that we are ever likely to observe. But other good examples exist, all pointing in the same direction. Both Hong Kong and Taiwan can be profitably contrasted with mainland China (at least prior to China's move toward market policies). India's success could be measured against Japan's, or most of Latin America against Chile. In case after case, we have the spectacle of culturally similar peoples lifting themselves out of poverty

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under free-market policies, while stagnating, regressing, and even starving in state-run economies.

Some may doubt the validity of this induction: just because market economies do better than government-run economies, why should we assume that a mixture of the two types of policies won't do even better? Almost every nominally "capitalist" nation has adopted extensive regulations and transfer programs. How can comparisons between Hong Kong and China show something wrong with the modern welfare state?

Nevertheless, it would be a mistake to dismiss such comparisons completely. In statistics, it is well known that you learn more about a population if its members vary significantly in the dimensions in which you are interested. If you want to study the effect of a drug, but the dosage ranges only from .99 mg to 1.01 mg, medical researchers will be unable to figure out how much of the difference is due to the drug, and how much to chance. In contrast, if the researchers observe the whole range of dosages, from none to a lot, it becomes much easier to rationally generalize. In the same way, if we compare hard-core free-market regimes to mildly socialistic regimes, it will be much harder to infer the economic importance of markets than if we broaden the comparison to include economic systems which reject the market altogether.

In any case, many arguments can be turned on the modern welfare state directly. Its most pervasive and expensive policies involve government pension programs and government supply of medical care. What is most curious about these policies is that they generally pay out to *everyone*, rich and poor alike. The result is that in the majority of cases, they tax citizens who could easily have paid for their retirement and medical care by themselves, at least before they were taxed. Similar complaints could be lodged against the regulatory wing of the welfare state, which frequently restricts and prevents competition with one bureau while a second agency tries to correct the market for insufficient competition.

Along the dimension of *economic* well-being, markets work extremely well, and there are good reasons to think that moderately market-oriented policies are worse than extremely market-oriented ones. To people who live near the subsistence level, this is extremely important: their welfare is primarily a function of their ability to satisfy their daily needs. But does this really matter for the citizens of the industrialized democracies, who live far above this meager level? Summarizing the psychological literature on wealth and happiness, Murray writes that "Happiness is very low until subsistence is reached, rises very steeply immediately thereafter, but quickly levels off as subsistence is left behind."[2] Later it will be argued that the *indirect* value of wealth, even for affluent nations, is greater than we might expect. But now we shall turn to some other components of human welfare which are apt to be very important in economically well-off countries.

3. Character and Well-Being

People don't just want to *have* things; they want to *be* somebody. To be happy, a person needs to see something valuable about his or her character. This is no easy matter because it is often difficult to develop a virtuous character. Aristotle explains that "Neither by nature, then, nor contrary to nature do the virtues arise in us; rather we are adapted by nature to receive them, and are made perfect by habit."[3] We develop a good character by practice, by actually living through difficult experiences and learning to master them. The problem is that in the short run, weakness of will may lead people to develop vices instead of virtues, even though they would be happier in the long run if they developed a character they could be proud of.

But what does this have to do with the relative abilities of government and the free market to promote human welfare? Though not immediately obvious, the connection is interesting. Governments have two sorts of policies with profound effects on the development of virtue. On the one hand, governments typically favor *paternalism*—using

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the threat of punishment to discourage self-destructive and vicious behavior. At the same time, governments often take care of people who are suffering because of their own irresponsible behavior. The free-market policy, naturally, is simply the negation of both.

Can one or both of these brands of state action help develop the human character and thereby enrich human well-being in *non-economic* terms? The problem with the paternalistic variety is that at best it merely compels good outward behavior. But *internal* strength of character tends to atrophy due to lack of opportunity to practice self-regulation. For example, if it were possible to successfully ban alcohol, alcohol abuse would cease to exist. But virtues like temperance and moderation would fall into disuse. Despite its association with an emphasis on moral character, paternalism tends to replace the development of virtue with shallow public displays thereof. If people's happiness depends on *actually* developing their character rather than merely seeming to do so the paternalistic route is a dead-end. Or as Thomas Szasz observes: "Paternalism is the mortal enemy of dignity: How can a person feel dignified *vis-à-vis* a medical profession, a judiciary, a government that never says to him: 'I don't know. It's none of my business. It's your problem. You deal with it.' "[4]

Other common government policies aim to shield individuals from the effects of their lapses of character. Of course, many problems are a combination of bad luck and bad choices, but the role of choice—especially habitual choice—is much neglected. The problem with government policies aiming to soften the blows of ill fortune is that it is nearly impossible to do so without rewarding bad character as well. Consider the case of a young man who says he is unable to find work and deserves government help. The difficulty is that *by the time he requests help* it may be impossible for him to extricate himself from his situation.

Just making different choices won't save him now, so it appears that his problem is due to bad luck. And yet, from a broader perspective, his condition may be largely due to his *habitual* choices—in short, his character. When considering human welfare, it is tempting to consider merely the man's current distress. But this perspective overlooks the harm that this sort of bailout will *prospectively* do to the character of the young man in question as well as others in comparable situations. Lacking the natural guidance of cause and effect, of poor choices gradually leading to intolerable situations, other young men may fail to develop their characters, and in the long run lose the happiness that comes from self-respect.

The market doesn't have any perfect way to develop character either, but at least avoids the pitfalls of these two breeds of state policy. Character won't spring up on demand under *any* system. But the market environment does tend to foster it by simultaneously giving people the freedom to test their strength of will along with the discipline of the natural rewards and punishments of virtue and vice.

4. Autonomy and Well-Being

A close link exists between discontent and government decisions. Every time the government makes a decision, a dissatisfied minority necessarily feels oppressed and ignored. When the government makes a wide range of decisions, almost every citizen is going to frequently land in the position of the unhappy minority.

Consider how the typical consumer feels in contrast to the typical citizen. The jazz aficionado rarely feels "outvoted" by the lovers of opera. The buyer of a luxury sedan doesn't feel that the drivers of compact cars are taking advantage of him. What is it about markets that creates the across-the-board satisfaction that no government policy seems able to evoke?

The crucial difference stems from what we could call a need for autonomy, or self-determination. It is degrading to feel that other people make your important decisions for you; and the happiness of getting to turn the tables and decide for *them* is poor

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compensation. When you are in the minority, it might seem as though it would feel glorious to assume the position of control; but attaining it just cements the realization of how precarious your dominant position is. In short, the minority feels humiliated by its powerlessness, and the majority feels threatened by the voices of discontent which will strip it of its power at the first opportunity. Political decision-making—*government* decision-making—fails to respect individuals' autonomy and thus reduces happiness along another non-economic dimension.

The opposite holds for market decision-making. Its crucial feature is that people make decisions for *themselves,* not for others. The objects of choice are not aggregate policies for everyone, but personal decisions for oneself. There is something deeply satisfying about this: one can participate in society while holding one's individuality intact.

Undeniably, many people want to control those who differ from them; but taking aggregate choices away makes it easier to accept the need to respect the rights of others. Thus, when the State determined the lawful religion of all of its subjects, the majority felt it unbearable to leave dissenters in peace. Privatize religion, take it out of the public realm, and gradually the contrary practices of others grow less painful to endure. Tolerance is, as it were, another virtue which we acquire by practice. In contrast, no amount of practice makes it easy to endure the denial of self-determination involved in political decision-making.

Imagine how people would feel if the free market in magazines were replaced with democratic collective choice. No longer do we have a marketplace where widely differing interests can be simultaneously satisfied. No longer can an individual independently decide which periodicals he or she would like to read. The result is that only publications that win majority approval get printed. However intense the preferences of minorities, the majority will ignore them. We can now control others' reading, as we could not under the free-market regime. But this opens up the ability of others to control *your* reading.

The point of this mental experiment is to show what different economic systems mean for autonomy, and why the destruction of autonomy tends to destroy human welfare in the process. The harm done to autonomy cannot be removed by making collective choice democratic—the harm lies in collective decision-making itself. While this does not show that government action is on balance worse in every case, the need to respect human autonomy is a much-ignored consideration which augments the case for the free market.

5. The Interaction of Economic and Broader Well-Being

The second section argued that free markets are the best system for creating economic prosperity, but added that after a point greater economic satisfaction may not be very important. The third and fourth sections considered other facets of human happiness, and argued that laissez-faire principles were just as beneficial from a non-economic perspective. A final issue to consider is the relationship between these two aspects of happiness.

Charles Murray may be correct that greater wealth alone has little effect on happiness after a certain point. But this considers only the *direct* effects of wealth on happiness. Far more important, however, are the *indirect* effects: greater wealth means that we need to spend less time satisfying our physical needs, creating the option to pursue loftier concerns. Philosophy, literature, and art have always flowered in the world's centers of wealth: in Athens and Rome in ancient times, in Italy and Holland during the Renaissance, down to the development of motion pictures in the United States. A priori, you would expect that only *after* people can rest from the desperate struggle for survival would they turn to other activities. The effect of greater economic prosperity is greater comfort, lei-

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sure, and surplus wealth which permit the development of the human personality. Of course, wealth only creates the *option* to strive after noneconomic ends, which is why the correlation between prosperity and civilization is imperfect. The point is that wealth is the critical "enabling condition" which makes the development of civilization possible.

Nor are the indirect effects of wealth confined to scholarly and artistic achievement. Prosperity is what allows every individual to develop his unique personality and potential. Imagine a struggling peasant in pre-capitalist society: his trials are so onerous that he lacks the leisure to explore his potential. Even more clearly, since greater wealth leads to a vast extension of the length of the human life, economic prosperity gives us the *time* to find fulfilling work, search for true love, or try to satisfy any other ambition. Before the Industrial Revolution, lifespans of 30 or 40 years were common. After you subtract the years of dependence spent in childhood, just imagine how short your horizon and how limited your goals would have to have been. This indirect effect of prosperity dwarfs the importance of the obvious direct benefits of riches.

Conclusion

Critics of the free market have often correctly pointed out how narrow-minded it is to equate human welfare with material possessions alone. The strategy here has been to accept this insight and show that free markets advance human welfare along non-economic dimensions as well. Whether we consider the raw ability of capitalism to "deliver the goods," its tendency to foster virtue, or its implications for human autonomy, the answer is the same. Moreover, those who belittle capitalism's material achievements are doubly in error; for in addition to its positive, direct effect on non-economic welfare, the free market's seemingly infinite multiplication of primitive man's economic well-being is precisely what has made all of our other cultural, intellectual, and personal accomplishments possible. □

1. In his *In Pursuit: Of Happiness and Good Government* (New York: Simon and Schuster, 1988), pp. 79–82.
2. *Ibid.*, p. 63.
3. *Nichomachean Ethics*, 1103a23-25.
4. Thomas Szasz, *The Untamed Tongue: A Dissenting Dictionary* (La Salle, Ill.: Open Court, 1990), p. 236.

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THE FREEMAN
IDEAS ON LIBERTY

Liberty, Government, and the Rule of Law (excerpt)

by Jeffry W. Duffy

Editor's Note:
In his essay, Mr. Duffy makes a critical inspection of the types of social ordering indicated by "free markets" and "government controls" in terms of law.

The experience of the United States in the twentieth century shows, I think, the truth of Friedrich Hayek's contention that the rule of law cannot survive the vagaries of politics once it begins to lose force as a cultural value in people's minds. The mental transformation wrought by socialist ideals has made many people willing to alter the prevailing mixture of freedoms and controls toward totalitarianism (though, of course, they did not see it that way) in the search for "social justice" and security. These may have been noble aims, but in the meantime it is not coincidental that the one area of law which has come into existence almost *ex nihilo* over the last century is the administrative law. The exigencies of the Great Depression made the rule of law vulnerable to politics, and the rule of law eroded accordingly, in favor of a jurisprudence which purports to justify the administrative state and which furnishes it with powers more extensive and more intrusive than any it held before.

In the 1930s, the Supreme Court of the United States began to allow Congress to delegate extensive legislative authority to agencies located in the executive and legislative branches of government, or "outside" any branch, by virtue of the political independence of the agency heads. In two great cases of 1935, *Panama Refining Co. v. Ryan,* and *Schechter Poultry Corp. v. United States,* the Supreme Court had struck down New Deal legislation on the grounds that Congress had delegated its powers unconstitutionally, but that doctrine fell into disuse with the Court's general acceptance of a New Deal world-view after President Roosevelt's court-packing plan gave them a fright in 1937.

Since then, it has been the norm for Congress to create a federal agency and allow it to legislate its own agenda within statutory guidelines that may be quite vague. The rules and regulations promulgated by these agencies have proliferated to such an extent that no mere citizen can be apprised of them all; specialized law practices are built around the rulings and procedures of a single agency; and compliance with the mass of technical legal requirements by a citizen who cannot employ full-time professional counsel is largely a matter of luck. At the same time, the exercise of police powers by government agents seems to have reached a new pitch of

Mr. Duffy holds a law degree and is pursuing a master's degree in economics at the London School of Economics. He is the second prize winner of the 1995–1996 Olive W. Garvey Fellowship. A copy of the full text of his prize-winning essay is available upon request from The Independent Institute (see page 3).

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effectiveness, to the detriment of the traditional liberties of citizens: powers of summary enforcement by means of seizure or monetary penalty are legion, and the prospect of judicial review of an administrative action can only be reassuring to someone who has not read administrative case law and seen for himself how deferential the courts have become to the judgments of government agencies.

We now live in a society where the administrative state exists in great tension with the rule of law, and both are enervated and demoralized. The first task facing classical liberals today is to rehabilitate the rule of law and thereby to subjugate the administration of government firmly to it; for it is only with reference to some political ideal that measures of policy will appear to be movements toward the free market or away from it, and the only political ideal which we know to be compatible with the civilization we inhabit is the rule of law.

If we do not reshape our law and government into a regime which creates and harmonizes market order and justice, we will slide into the slough of failed nations where so many have gone before us by tyranny, by foreign conquest, by civil war, or by mere creeping decay. Other peoples have known something of what freedom was, but it passed away from them—from the Athenians, from the Romans, from the Italian republics, from England. Let us not think that we will avoid that fate merely by congratulating ourselves on the accomplishments of our past, for which we were not responsible, and which have always been tainted by some evil, like slavery or institutionalized misogyny, of gross inequality under the law. But if we do what the wise have always striven to do, if we revive the ideal which animates the law and bequeath to succeeding generations that true liberty which only true law can provide, then we can say to those generations what Shelley said in 1820 in his "Ode to Naples":

> Thou which wert once, and then didst cease to be,
> Now art, and henceforth ever shall be, free,
> If Hope, and Truth, and Justice can avail. □

On the Need for Social Coercion

(excerpt)

by Michael Huemer

Editor's Note:

In his paper, Mr. Huemer argues that social coercion is unjustified in attempts to solve the tragedy-of-the-commons problem both because it is inadequate and because better solutions to the problem exist.

We are faced with a problem. Supposing that commons situations exist in our society (the management of natural resources is the most likely example), what, if anything, can be done about them, to avert the disaster that ensues if every one acts as a rational egoist? Garrett Hardin suggests this solution: we can agree to establish some central authority which will force us all to

Mr. Huemer, is a graduate student in philosophy at Rutgers University. He was Third Prize winner in the 1995–1996 Olive W. Garvey Fellowship. A copy of his full essay is available on request.

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cooperate.[1] This is what he calls "mutual coercion, mutually agreed upon." Thus, ill-fated ranchers might get together and pick some impartial party to be the "police"; let's say they pick Bob. They give Bob their guns and tell him, "Now make sure none of us puts too many cattle on the land," and presumably they pay him some compensation for performing this job. Then they all go home feeling relieved and secure.

But another problem arises, which Hardin recognizes but hasn't much of a solution for: now that Bob is charged with watching the ranchers, who will watch Bob? If the ranchers cannot be assured that Bob will do the job they have given him competently, or that he will not otherwise exploit them, then they have not found much of a solution to their problem.

Bob might disappoint the ranchers in various ways, once he is given power: (a) He might fail to protect the commons due to ignorance of what was required; he might not know how many cattle was too many to let use the land, for example. (b) He might fail to protect the commons due to lack of interest; after all, if it is not his land, he may not care if it is degraded. (c) He might decide to exploit the commons himself; he might start raising his own animals on the land, and keep off the ranchers' cows. (d) He might demand exorbitant fees from the ranchers for his services.

How, then, can the ranchers be sure that Bob will not attempt to do these things? Since we have assumed he has sufficient power to force the ranchers to use the commons responsibly, there is reason to suspect that he will also have sufficient power to exploit the ranchers and their land.

Of course, this story is most interesting as a metaphor: if we as a society establish a coercive institution (in particular, a government) to force individuals to behave in ways that are beneficial to the group, how can we be sure that this institution will use its power to serve the interests of society and not rather merely to serve its own interests?

Here's one solution we might come up with: if Bob does not do his job properly, the ranchers can get together and collectively oust him. Hopefully, the threat of this will keep Bob in line.

This plan, however, confronts a problem analogous to the original tragedy of the commons. Each individual rancher would have to decide whether to join in the effort to overthrow Bob. By joining in, he incurs a certain risk to himself, but he also increases the chances that the rebellion will be successful. The problem is that the costs involved in his individual decision to help overthrow Bob will be borne by himself, whereas the benefits will redound to the group. So he will not join, preferring to stay at home and let the others take care of Bob; and, following the same reasoning, neither will anyone else.

This result is much clearer if we consider the possibility of overthrowing a government, for in that case it is still less likely that one individual's decision to join the rebellion will make the difference to whether it succeeds, but it is highly likely that it will result in that individual's death. We have, then, another tragedy-of-the-commons problem: each person has an action available to him that would harm him individually but would benefit the group; and the logic of the commons predicts that no one will choose that action, even though the group as a whole is worse off in that case than they would be if everyone acted.

A second possible solution to our problem (in the context of the government of society) would be this: we have a democratic government. We can periodically elect leaders to tell us what to do, and we can vote out of office those who do not do their jobs well. Although this proposal is some improvement, it still introduces another form of the tragedy of the commons. Discovering which policies are desirable, which elected officials have performed well, and which candidates will perform well in the future, all requires extensive research. The individual who chooses thus to watch the government takes on all the costs in time and energy of his decision, while the benefits of his action are shared by the group. Under these circumstances, as the tragedy-of-the-commons logic predicts, very few people will expend

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their resources becoming informed about and involved in political matters. And, again, the individual who chooses so to expend his time has almost no chance in a large society of noticeably affecting public policy. This, rather than voter "apathy," is the reason why people in a democratic society usually don't vote, and when they do, they are usually ill informed. Voters realize that informing themselves about public policy and voting is a waste of their time.

Perhaps the answer is that we just have to hope for our leaders to be responsible and benevolent. The question then becomes whether this is any more realistic than hoping for ordinary citizens to be responsible and benevolent to begin with (in which case the tragedy of the commons problem would not have arisen). There is, on the contrary, reason to expect leaders of a coercive institution to be *less* altruistic than ordinary citizens. Those who desire as a career making rules that the rest of society are forced to obey, are likely to be those who value *power* and enjoy exercising power. Such individuals, I think, are less likely to be altruistic than the general run of men, and they will have a tendency to extend their own power whenever they can. Furthermore, the *opportunities* for benefitting oneself at the expense of the rest of society are certainly greater according as one has more power, so it is not clear that we have gained anything by placing power in the hands of a few individuals in order to prevent the others from selfishly harming society.

Is There a Non-Coercive Solution?

The solution to Garrett Hardin's original tragedy of the commons problem is fairly straightforward: the ranchers need a system of private property. If we can suppose the ranchers to be sufficiently coordinated and reasonable to be able to get together and agree to set up a government-like institution, then they ought to be coordinated and reasonable enough to be able instead to agree to divide up the commons into individually-owned parcels of land. Furthermore, they don't need even this degree of coordination if each rancher simply claims a plot of land if he is the first person to find and use it (Lockean fashion). Each rancher then will have an incentive to maintain the quality of the grazing area because only so will he be able to continue to use his land in the future. □

1. Garrett Hardin, "The Tragedy of the Commons," *Science*, December 13, 1968, pp. 12143-8.

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From Liberalism to Tribalism

Photo: Sherry Syphard

Occasionally, an event attains culturally symbolic status, crystallizing a nation's identity, values, and conflicts. One thinks of the Lincoln assassination, the Lindbergh flight, the Woodstock Festival, the Apollo 11 lunar landing . . . events that captured the spirit, or torment, of their times.

To these, add the O. J. Simpson verdict.

During the evening before the verdict was announced, I sat watching TV as a succession of lawyers (morphed into "expert commentators") read the tea leaves of the trial. It was like a pre-game show for the Super Bowl. In fact, from its outset—from the football-hero defendant (ever eager to trade autographs for cash), to the cheering bystanders during his famous highway chase ("Run, O. J., run!"), to the courtroom clashes between the celebrity attorneys ("Marcia scored heavily on Johnnie today"), to the unspeakable hawkers outside the courtroom ("Get your Bronco bumper stickers here!")—the Trial of the Century had become a garish new national pastime.

Never mind that the proceedings were supposed to be about justice for two slaughtered individuals. The fate of innocent individuals seemed to weigh as little in that Los Angeles courtroom as they had in any ancient Roman arena.

The blatantly racist appeals by the defense emphasized this. The overwhelmingly black jury was not asked to seek justice for individuals, but exhorted to make a *social statement about white racism*. The individual defendant was no longer on trial; social institutions were. Justice for individual victims was no longer the point; sending a message to white society, collectively, was.

"Race plays a part of everything in America," Simpson attorney Johnnie Cochran would say later. "Not only did we play the 'race card,'" colleague Robert Shapiro would admit, "we dealt it from the bottom of the deck."

When the verdict of "not guilty" was read, I wept. For the victims. For what I believe was a gross miscarriage of justice. And for the future of my country.

But while millions wept, many others cheered. And the cheers and tears, instantly televised, were overwhelmingly apportioned along racial lines.

It was a stunning moment of national revelation. People sitting in the same rooms were experiencing violently opposing emotions—and looking at each other across a value chasm that seemed interplanetary.

"This is probably a bitter pill for most white Americans to swallow," the president of the Los Angeles Urban League told *USA Today*, "but this trial is about many things. . . . For some, [the verdict] does represent a way of partially vindicating some of the past injustices that have been inflicted upon so many African-Americans. . . ."

But was that the goal of the murder trial? Clearly, the response to the verdict by many had little to do with an objective search for justice for individuals.

Mr. Bidinotto is a long-time contributor to Reader's Digest *and* The Freeman, *and a lecturer at FEE seminars.* Criminal Justice? The Legal System versus Individual Responsibility, *edited by Mr. Bidinotto and published by FEE, is available in a new hardcover edition at $24.95.*

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For many decades, liberals have denounced individualism as "atomistic" and "polarizing." They have argued that to hold supreme the rights and well-being of individuals is socially divisive. Only by viewing oneself as a subordinate part of a greater social whole can we have collective harmony. Only by sacrificing individual interests to those of the group can we live in peace and brotherhood.

But the opposite has proved true. Only by respecting the sanctity of *individuals* can social peace and harmony be guaranteed. And it is precisely the obliteration of individualism that is causing our nation to disintegrate into warring tribal gangs.

The United States of America was the first nation constituted to protect individual life, liberty, and rights *as its ultimate goal*. In theory, these protections were to be guaranteed to all, equally and by law. In reality, the battle for equal rights under the law was not won with the framing of the Constitution; there remained serious contradictions in that document (its toleration of slavery being the worst). Over many decades, the struggle to make the law an impartial guarantor of the individual rights continued. During the 1960s, the last legal inequities were eradicated.

But for liberal collectivists, that was not enough. No sooner had the civil rights movement succeeded in its *individualist legal* ends, than it was hijacked and turned toward *collectivist social* ends. The aim of the early reforms had been a "color-blind" legal system, based on *equal rights for individuals*. The goal of the collectivists, by contrast, was *equal status for groups*.

No longer was equality before the law sufficient; the new goal was equality in socio-economic status. And no longer were individuals to be the beneficiaries; groups were. The collectivist hijackers of the civil rights movement now demanded not the protection of individual rights, but the *sacrifice* of individual rights for the sake of group objectives.

By viewing individuals as expendable, sacrificial parts of a greater whole, liberal collectivists divided America into clashing camps. Decrying inequities of status (instead of rights), they promulgated resentment, envy, and hostility. Extolling group traits (rather than individual virtues), they proclaimed that one should take "pride" in such collective characteristics as one's racial, national, religious, and ethnic background. Politically empowering groups (instead of individuals), they created legal incentives for people to affiliate in collectives shaped by class, gender, age, and race.

The result of their experiment in collectivization? Not social harmony, but cultural disintegration. The old American "melting pot" and "color-blind law" is long gone. Instead, America is sinking into a violent new tribalism.

Younger working people resent the insatiable political demands of the elderly; the elderly resent their escalating property taxes going into public schools for the younger generation; teenagers demand subsidized college tuition from adults. Residents trapped in urban decay seethe with hostility at people living in protectively-zoned suburbs; suburbanites complain about providing food stamps for inner-city dwellers and crop subsidies for farmers; farmers denounce high taxes for urban mass transit. Men complain about preferential laws for women, women complain about unequal pay *vis-à-vis* men.

But without question, the ugliest collectivist affiliations are those defined along racial and ethnic lines. Physiological differences are the easiest to perceive; and for the mindless, provide the least demanding criteria for group allegiances—or hatreds.

This is the logical consequence of collectivism's fragmentation of society. The disenfranchisement of the individual inevitably means the empowerment of gangs. The same collectivism that has Balkanized the globe, is now Balkanizing America.

The Simpson verdict, and its aftermath, was a defining moment for our culture . . . and a wake-up call. More than a verdict in a single murder case, it was a symbolic verdict passed on a collapsing culture—and on the murderous collectivist philosophy that is tearing it asunder. □

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THE FREEMAN
IDEAS ON LIBERTY

Thomas Paine—Passionate Pamphleteer for Liberty

by Jim Powell

As nobody before, Thomas Paine stirred ordinary people to defend their liberty. He wrote the three top-selling literary works of the eighteenth century, which inspired the American Revolution, issued a historic battle cry for individual rights and challenged the corrupt power of government churches. His radical vision and dramatic, plainspoken style connected with artisans, servants, soldiers, merchants, farmers, and laborers alike. Paine's work breathes fire to this day.

His devastating attacks on tyranny compare with the epic thrusts of Voltaire and Jonathan Swift, but unlike these authors, there wasn't a drop of cynicism in Paine. He was always earnest in the pursuit of liberty. He was confident that free people would fulfill their destiny.

He provoked explosive controversy. The English monarchy hounded him into exile and decreed the death penalty if he ever returned. Egalitarian leaders of the French Revolution ordered him into a Paris prison—he narrowly escaped death by guillotine. Because of his critical writings on religion, he was shunned and ridiculed during his last years in America.

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But fellow Founders recognized Paine's rare talent. Benjamin Franklin helped him get started in Philadelphia and considered him an "adopted political son." Paine served as an aide to George Washington. He was a compatriot of Samuel Adams. James Madison was a booster. James Monroe helped spring him from prison in France. His most steadfast friend was Thomas Jefferson.

Paine was a prickly pear—vain, tactless, untidy—but he continued to charm people. Pioneering individualist feminist Mary Wollstonecraft wrote: "He kept everyone in astonishment and admiration for his memory, his keen observation of men and manners, his numberless anecdotes of the American Indians, of the American war, of Franklin, Washington, and even of his Majesty, of whom he told several curious facts of humour and benevolence."

Despite his blazing intelligence, Paine had some half-baked ideas. To remedy injustices of the English monarchy, he proposed representative government which would enact "progressive" taxation, "universal" education, "temporary" poor relief, and old-age pensions. He naively assumed such policies would do what they were supposed to, and it didn't occur to him that political power corrupts representative government like every other government.

Yet in the same work containing these proposals—*Rights of Man*, Part II—Paine

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affirmed his libertarian principles again and again. For example: "Great part of that order which reigns among mankind is not the effect of government. It has its origin in the principles of society and the natural constitution of man. It existed prior to government, and would exist if the formality of government was abolished."

The "Muse of Fire"

Paine stood five feet, ten inches tall, with an athletic build. He dressed simply. He had a long nose and intense blue eyes. His friend Thomas Clio Rickman noted that "His eye, of which the painter could not convey the exquisite meaning, was full, brilliant, and singularly piercing. He had in it the 'muse of fire.'"

Thomas Paine was born on January 29, 1737, in Thetford, England. His mother, Francis Cooke, came from a local Anglican family of some distinction. His father, Joseph Paine, was a Quaker farmer and shoemaker. Although Thomas Paine wasn't a practicing Quaker, he endured some of the intolerance directed against Quakers.

Paine took a while to find his calling. He left school at age 12 and began apprenticeship as a Thetford corset-maker, but he didn't like it. Twice he ran away from home. The second time, in April 1757, he joined the crew of the *King of Prussia*, a privateer that didn't find much booty. He tried his hand as a corset-maker again, then as an English teacher and independent Methodist preacher. Public-speaking experience surely gave him insights about what it takes to stir large numbers of people.

Paine's most puzzling decision was to become an excise tax collector. He got fired, landed another excise tax-collecting job, and got fired again after writing a pamphlet to promote pay raises. Paine witnessed the resourcefulness of smugglers, resentment against tax collectors, and the pervasiveness of government corruption.

Except for a couple of brief interludes, Paine was a loner. Believing that marriage should be based on love, not social status or fortune, he wed Mary Lambert, a household servant, in September 1759, but within a year she died during childbirth. In March 1771, he married again—Elizabeth Ollive, a 20-year-old teacher. While trying to earn a living as a grocer and tobacconist, he went bankrupt in early 1774. Most of his possessions were auctioned April 14th. Two months later, Paine and his wife went their separate ways.

Meanwhile, he thrived on discussions about philosophy and practical politics. In Lewes, Paine belonged to the Headstrong Club, a discussion group. It gathered weekly at the White Horse Tavern where Paine relished ale and oysters. One of the members was an ardent republican and defender of libertarian rebel John Wilkes. Paine's radical libertarian views jelled.

Intellectually curious, Paine liked to browse in bookstores, attend lectures on scientific subjects, and meet thoughtful people. He befriended a London astronomer who introduced him to Benjamin Franklin, then working to expand business with England. Franklin seems to have convinced Paine that he could make a better life in America, and Franklin provided a letter of introduction to his son-in-law in Philadelphia.

Arrival in America

Paine arrived November 30, 1774. He rented a room at Market and Front streets, the southeast corner—from which he could see the Philadelphia Slave Market. He spent spare time in a bookstore operated by Robert Aiken. Paine must have impressed the bookseller as a lively and literate man, because he was offered the job of editing Aiken's new publication, *The Pennsylvania Magazine*.

For Paine, this experience was a proving ground. He produced at least 17 articles, perhaps as many as 26, all signed with such pseudonyms as "Vox Populi," "Justice, and Humanity." He edged closer to the controversy of America's future relationship with England. He vehemently attacked slavery and called for prompt emancipation.

Then came the Battle of Lexington, at

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dawn on April 19, 1775. British Major John Pitcairn ordered his troops to fire on American militiamen gathered in front of a meetinghouse, killing eight and wounding ten. The outraged Paine resolved to defend American liberty.

Common Sense

In early September, he began making notes for a pamphlet. He probably started writing around the first of November. He worked at a wobbly table, scratching out the words with a goose quill pen on rough buff paper. The manuscript proceeded slowly, because writing was always difficult for Paine. He discussed the evolving draft with Dr. Benjamin Rush whom he had met at Aiken's bookstore. The draft was completed in early December. Paine got comments from astronomer David Rittenhouse, brewer Samuel Adams, and Benjamin Franklin. Paine thought of calling his pamphlet *Plain Truth,* but Dr. Rush recommended the more earthy *Common Sense.*

Dr. Rush arranged for the pamphlet to be published by Robert Bell, a Scotsman who had become a noted Philadelphia publisher, colorful auctioneer, and underground supporter of American independence. Priced at 2 shillings, the 47-page *Common Sense*—written anonymously "by an Englishman"—was published on January 10, 1776. Paine signed over royalties to the Continental Congress.

With simple, bold, and inspiring prose, Paine launched a furious attack on tyranny. He denounced kings as inevitably corrupted by political power. He broke with previous political thinkers when he distinguished between government compulsion and civil society where individuals pursue private productive lives. Paine envisioned a "Continental union" based on individual rights. He answered objections from those who feared a break with England. He called for a declaration to stir people into action.

Common Sense crackled with unforgettable lines. For example: "Society is produced by our wants, and government by our wickedness. . . . The sun never shined on a cause of greater worth. . . . Now is the seed-time of Continental union. . . . We have every opportunity and every encouragement before us to form the noblest, purest constitution on the face of the earth. . . . O! ye that love mankind! Ye that dare oppose not only the tyranny but the tyrant, stand forth!. . . . We have it in our power to begin the world over again. . . . The birthday of a new world is at hand."

The first edition sold out quickly. Soon rival editions began appearing. Printers in Boston, Salem, Newburyport, Newport, Providence, Hartford, Norwich, Lancaster, Albany, and New York issued editions. Within three months, Paine estimated that over 120,000 copies had been printed. Dr. Rush recalled that "Its effects were sudden and extensive upon the American mind. It was read by public men, repeated in clubs, spouted in Schools, and in one instance, delivered from the pulpit instead of a sermon by a clergyman in Connecticut." George Washington declared that *Common Sense* offered "sound doctrine and unanswerable reasoning."

Paine's incendiary ideas leaped across borders. An edition appeared in French-speaking Quebec. John Adams reported that "Common Sense was received in France and in all Europe with Rapture." There were editions in London, Newcastle, and Edinburgh. *Common Sense* was translated into German and Danish, and copies got into Russia. Altogether, some 500,000 copies were sold.

Common Sense changed the political climate in America. Before its publication, most colonists still hoped things could be worked out with England. Then suddenly, this pamphlet triggered debates where increasing numbers of people spoke openly for independence. The Second Continental Congress asked Thomas Jefferson to serve on a five-person committee that would draft the declaration Paine had suggested in *Common Sense.*

"Thomas Paine's *Common Sense,*" reflected Harvard University historian Bernard Bailyn, "is the most brilliant pamphlet written during the American Revolution,

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and one of the most brilliant pamphlets ever written in the English language. How it could have been produced by the bankrupt Quaker corset-maker, the sometime teacher, preacher, and grocer, and twice-dismissed excise officer who happened to catch Benjamin Franklin's attention in England and who arrived in America only fourteen months before *Common Sense* was published is nothing one can explain without explaining genius itself."

When Independence brought war, Paine enlisted as a military secretary for General Daniel Roberdeau, then for General Nathaniel Greene, and by year-end 1776 he was with General George Washington. The untrained, poorly paid Americans, typically serving for a year, were routed by well-trained British soldiers and ruthless Hessian mercenaries.

"The Harder the Conflict, the More Glorious the Triumph"

Paine wondered how he could boost morale. By evening campfire he began writing a new pamphlet. When he returned to Philadelphia, he took his manuscript to the *Philadelphia Journal*, which published it on December 19th as an eight-page essay, *American Crisis*. On Christmas Day 1776, George Washington read it to his soldiers. Paine's immortal opening lines: "These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country; but he that stands it *now*, deserves the love and thanks of man and woman. Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph." Within hours, Washington's fired-up soldiers launched a surprise attack on sleeping Hessians in Trenton, giving Americans a much-needed battle victory.

By the time the Revolutionary War ended, Paine had written a dozen more *American Crisis* essays. They dealt with military and diplomatic issues as Paine promoted better morale. In the second essay, published January 13, 1777, Paine coined the name "United States of America."

After the British surrendered at Yorktown, Paine was broke, and he didn't know how he would earn a living. He wanted a government stipend for what he had done to help achieve American Independence. New York State gave him a 300-acre farm in New Rochelle, about 30 miles from New York City, which had belonged to a British loyalist. Congress voted Paine $3,000 for war-related expenses he had paid out of pocket.

Then he came up with an idea for cashing in on the American bridge-building boom. He didn't find American backers, so on Franklin's recommendation, he sought support in France and England. While the project fizzled, it brought him into contact with leading classical liberals of the day. In France, he renewed his friendship with Marquis de Lafayette, who had served the American Revolution. Lafayette introduced Paine to the Marquis de Condorcet, a French mathematician and influential classical liberal. In England, Paine met Parliamentary radical Charles James Fox and Edmund Burke, a Parliamentary defender of the American Revolution and friend of radical John Wilkes.

The outbreak of the French Revolution, in July 1789, horrified Burke who began writing his counterrevolutionary manifesto, *Reflections on the Revolution in France*. It defended monarchy and aristocratic privilege. Burke's book appeared November 1, 1790, and it reportedly sold almost 20,000 copies within a year. French, German, and Italian editions soon followed.

Rights of Man

Meanwhile, Paine, who had been working on a new book about general principles of liberty, learned the gist of Burke's manifesto and decided to revise his book as a rebuttal. He moved into a room at the Angel Inn, Islington, where he could concentrate on the project. He started work November 4th. He worked steadily, often by candlelight, for some three months. He finished the first part of *Rights of Man* on January 29, 1791—his

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birthday. He was 54. He dedicated the work affectionately to George Washington, and it was published on Washington's birthday, February 22nd.

While Burke had impressed many people with flowery prose, Paine replied with plain talk. He lashed out at tyranny. He denounced taxes. He specifically denied the moral legitimacy of the English monarchy and aristocracy. He declared that individuals have rights regardless what laws might say. For centuries, people had resigned themselves to tyranny and war, but Paine provided hope these evils could be curbed.

Paine defended the French *Declaration of the Rights of Man and of Citizens*, which included a commitment to private property. "The right to property being inviolable and sacred, no one ought to be deprived of it, except in cases of evident public necessity, legally ascertained, and on condition of just indemnity."

The first printing sold out in three days. The second printing, within hours. There was a third printing in March 1791, a fourth printing in April. Some 200,000 copies sold in England, Wales, and Scotland. Another 100,000 copies were sold in America.

Rights of Man convinced many people to support the French Revolution and dramatic reform in England, and the government reacted with repression. Pro-government newspapers denounced Paine as "Mad Tom." Churchmen delivered sermons attacking Paine. People hanged effigies of Paine across England. On May 17, 1792, the government charged him with seditious libel, which could be punished by hanging. Excise tax collectors ransacked Paine's room. He hastened to Dover and boarded a boat for Calais, France, in September 1792. An arrest warrant reached Dover about 20 minutes later.

An enthusiastic crowd welcomed him. He was offered honorary citizenship of France and elected as Calais representative to the National Convention which would develop reforms. He didn't speak French, and he often failed to realize how fast the political situation was changing. But he knew he was an ideological ally of the so-called *Girondins* who favored a republican government with limited powers.

His adversaries were the ruthless, xenophobic Jacobins. Incredibly, Paine was considered suspect because he was born in England—even though he could be hanged if he returned there. In the middle of the night before Christmas 1793, Jacobin police hauled him away to Luxembourg Prison. Paine was held without trial in a tiny, solitary cell. On July 24, 1794, the public prosecutor added Paine's name to the list of prisoners who would be beheaded, but he got lucky. Prison guards mistakenly passed by his cell when they gathered the night's victims. Three days later, July 27, 1794, people had had enough of the Terror, and they beheaded Robespierre, the most fanatical promoter of Jacobin violence, and the worst was over.

Age of Reason

Before Paine was imprisoned, he started his most controversial major work, *Age of Reason*, and he continued writing behind bars. While he commended Christian ethics, believed Jesus was a virtuous man, and opposed the Jacobin campaign to suppress religion, he attacked the violence and contradictions of many Bible stories. He denounced the incestuous links between church and state. He insisted that authentic religious revelation came to individuals rather than established churches. He defended the deist view of one God and a religion based on reason. He urged a policy of religious toleration.

Age of Reason had a big impact, in part, because Paine wrote it with his trademark dramatic, plainspoken style which stirred strong emotions. The book became a hot seller in England, and government efforts to suppress it further spurred demand. The book was much sought after in Germany, Hungary, and Portugal. There were four American printings in 1794, seven in 1795, and two more in 1796. People formed societies aimed at promoting Paine's religious principles.

U.S. minister to France James Monroe

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demanded that government officials bring Paine to trial or release him. Monroe was eloquent: "the citizens of the United States cannot look back to the era of their revolution, without remembering, with those of other distinguished patriots, the name of Thomas Paine. The services which he rendered them in their struggle for liberty have made an impression of gratitude which will never be erased, whilst they continue to merit the character of a just and generous people."

By November 6th, gray-bearded and frail, Paine was free at last. In 1801, First Consul Napoleon Bonaparte invited Paine to dinner, hoping for insights about conquering Britain. Paine recommended a policy of peace, the last thing Napoleon wanted to hear, and they never met again.

Paine returned to America on September 1, 1802. He was 65. A Massachusetts newspaper correspondent observed: "Years have made more impression on his body than his mind. He bends a little forward, carries one hand in the other behind, when be walks. He dresses plain like a farmer, and appears cleanly and comfortably in his person. . . . His conversation is uncommonly interesting; he is gay, humorous, and full of anecdote—his memory preserves its full capacity, and his mind is irresistible."

Paine was subjected to personal attacks from the Federalist press, but he spoke out on controversial issues. For example, after Napoleon gained control of Louisiana in 1800, and the Mississippi was closed to American shipping, Federalists called for war against France. Paine encouraged President Jefferson to propose purchasing the Louisiana territory. While Federalist Alexander Hamilton thought Napoleon would never go for the idea, Paine drew from his firsthand knowledge: "The French treasury is not only empty, but the Government has consumed by anticipation a great part of next year's revenue. A monied proposal will, I believe, be attended to. . . ." In May 1803, Napoleon sold the Louisiana territory to the United States for $15 million.

Although Federalist critics savaged President Thomas Jefferson for defending Paine, he courageously invited his friend to the White House. When Jefferson's daughters Mary and Martha made clear they would rather not associate with Paine, Jefferson replied that Paine "is too well entitled to the hospitality of every American, not to cheerfully receive mine."

During Paine's last years, he was desperate for cash as his health deteriorated, and he lived in pitiful squalor. He asked to be moved into the home of his friend Marguerite de Bonneville at 59 Grove Street, New York City, and there he died on the morning of June 8, 1809. Mme. de Bonneville arranged for burial at his New Rochelle farm because no cemetery would take him.

Paine didn't rest in peace. A decade later, English journalist William Cobbett, a foe of Paine's who became a disciple, secretly dug up the casket and shipped it to England. According to some accounts, he thought that by making it part of a shrine, he could inspire large numbers of people to push for reform of the government and the Church of England. But people weren't much interested in Paine's bones. When Cobbett died in 1835, they were dispersed with his personal effects and lost.

Paine remained a forgotten Founder for decades. Theodore Roosevelt summed up the prevailing view when he referred to Paine as a "filthy little atheist." The first really comprehensive biography didn't appear until 1892. There still isn't an authoritative edition of Paine's complete work.

The American bicentennial helped revive interest in Paine. Paperback collections of his major writings became widely available for the first time, and at least eight biographies have appeared since then—two within the past year.

Perhaps a new generation is rediscovering this marvel of a man. He didn't have much money. He never had political power. Yet he showed how a singleminded private individual could, by making a moral case for natural rights, arouse millions to throw off their oppressors—and how it could happen again. □

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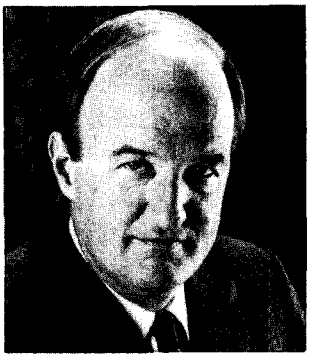

Good News: Textbook Macro Model Rejected!

"The AS/AD model . . . is seriously flawed . . . a model of the worst type—a model that obscures, rather than clarifies."[1]
—David Colander

Finally, a major academic economist has repudiated the dangerously flawed macro model used in all standard textbooks—the so-called Aggregate Supply (AS) and Aggregate Demand (AD) curves. David Colander, well-respected economics professor and author, has written a devastating critique of AS-AD macroeconomics in the latest issue of the prestigious *Journal of Economic Perspectives,* an official journal of the American Economic Association. What is more remarkable is that he considers himself a Keynesian "and proud of it," yet he is in the forefront of revamping the way economics is taught.[2]

The teaching of macroeconomics needs a new approach on college campuses. A million and a half students study economics each year and they are receiving a heavy dose of bad economics, especially in the macro sections. The AS-AD model currently in vogue in virtually all textbooks[3] is a fatally flawed assault on free-market economics. To understand why, see the standard diagram of AS-AD analysis at the top of the next page.

Dr. Skousen is an economist at Rollins College, Winter Park, Florida 32789, and editor of Forecasts & Strategies, one of the largest investment newsletters in the country. For more information about his newsletter and books, contact Phillips Publishing Inc. at (800) 777-5005.

The Fatal Flaw in Macroeconomics

What's wrong with this model of the economy? First, it is rooted in the Keynesian theory that the free market cannot guarantee full employment. The diagram illustrates how the economy can allegedly be stuck forever at a high level of unemployment and recession. Note that point E, where aggregate demand and supply meet, is at less than full employment. By implication, increased government spending (the Keynesian prescription) can stimulate economic activity and push the AD curve forward until full employment is achieved, where the AS curve is vertical.

However, most economists now recognize that this old-fashioned Keynesian view of stagnation is fallacious. The free market will always achieve full-employment equilibrium as long as wages and prices are flexible and the government doesn't engage in perverse monetary/fiscal policies.

Another problem with the AS-AD model arises when the economy reaches the point of full employment (where the AS curve is vertical). The model suggests that further deficit spending or inflating the money supply will only drive up prices without affecting real output. Yet numerous studies of countries suffering from runaway inflation demonstrate that inflation causes real output to fall also.

These are just a few of the many problems with the AS-AD model.

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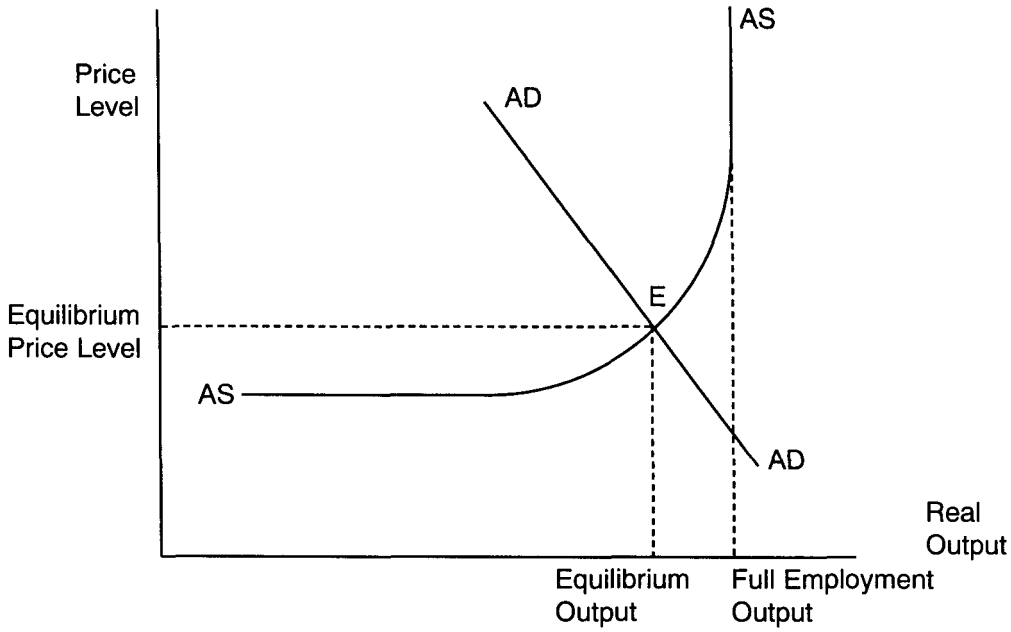

Professor Colander doesn't address any of the criticisms mentioned above, however. Instead, he focuses on the inner-contradictions in the AD and AS curves themselves. Essentially, Colander shows how AS-AD analysis is internally inconsistent because it relies on contradictory assumptions. The supply relationships packed into AD are at war with the supply relationships underlying AS. Moreover, the textbook model implies that supply and demand are totally independent of each other in the aggregate economy, a theory that contradicts all common sense.

So what to do? Many of Colander's colleagues favor complete banishment. Reuven Brenner, an economist at McGill University, not only dismisses textbook macro as "pseudo-science" but considers astrology as its closest allied field![4]

Needed: A New Macro Model

Yet Colander is afraid to scrap AS-AD entirely, and opts to salvage the faulty model in his current textbook, not because he is academically dishonest, but because he doesn't have a legitimate alternative. A bad theory won't disappear until you have a good theory to replace it with.

The problem remains: What can replace the AS-AD model? Austrian economics comes to the rescue! The stages-of-production model developed by Ludwig von Mises and Friedrich Hayek offers an excellent alternative. My own four-stage macro model provides a graphic representation of the whole economy. It incorporates the two most important variables in the aggregate economy—what Roger Garrison, economics professor at Auburn University, labels "time and money."[5] Professor Garrison and I are among those free-market economists attempting to develop the graphics of a new macroeconomic model. Stay tuned. □

1. David Colander, "The Stories We Tell: A Reconsideration of AS/AD Analysis," *Journal of Economic Perspectives* (Summer, 1995), pp. 169–188.

2. Professor Colander has been directly involved in two popular studies, *The Making of an Economist*, co-authored by Arjo Klamer (Westview Press, 1990), and *Educating Economists*, co-authored by Reuven Brenner (University of Michigan Press, 1992), both of which are damning critiques of the economics profession.

3. Paul Heyne's *Economic Way of Thinking* (Macmillan, 1994, 7th edition) is the only exception, and it is regarded primarily as a micro text.

4. Reuven Brenner, "Macroeconomics: The Masks of Science and Myths of Good Policies," *Educating Economists*, pp. 123–151.

5. Garrison has developed a fascinating graphical technique linking Keynesian and Austrian economics with a production-possibility curve. See Roger Garrison, "Linking the Keynesian Cross and the Production Possibilities Frontier," *Journal of Economic Education* (Spring, 1995). For a full exposition of my 4-stage model, see my work, *The Structure of Production* (New York University Press, 1990), Part 2. This book also introduces an alternative form of aggregate supply and demand curves.

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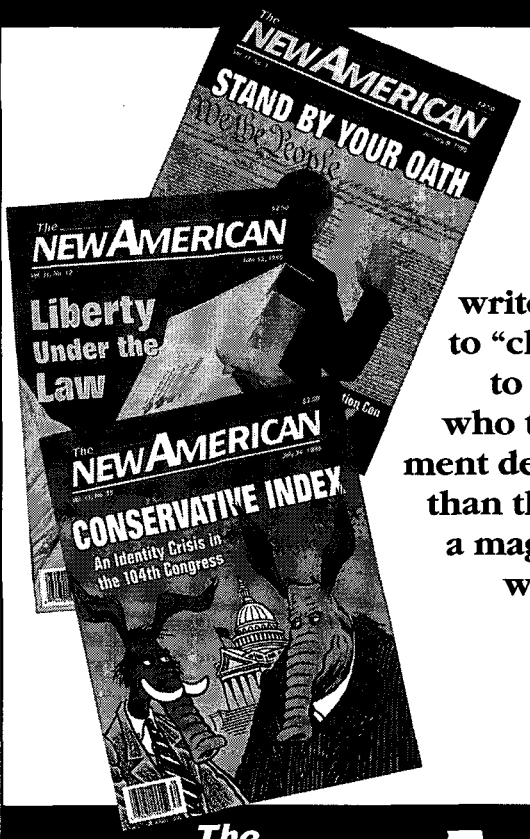

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BOOKS

The Lustre of Gold

With an Introduction by
Hans F. Sennholz

Foundation for Economic Education • 1995 • 153 pp.+iv • $14.95 paperback

Reviewed by Ron Paul

The lustre of gold indeed! Unearth an ancient Roman coin, and it gleams as surely as it did in the Forum of The Republic. Melt down (Heaven forbid) a gold Eagle from the presidency of George Washington, and the gold—shorn of any numismatic value—will buy about what it did then. The paper dollar, on the other hand, has lost almost all of the value it had before the founding of the Federal Reserve and the destruction of the classical gold standard.

Money is a commodity like any other, as Carl Menger and Ludwig von Mises showed, but a commodity that was gradually settled on by market participants as the most liquid commodity, that is, the thing most readily accepted and held by other people for use in economic transactions.

There is one difference, however, as Murray Rothbard pointed out, between a monetary commodity and other commodities. All other things being equal, we are better off with more tomatoes or refrigerators than fewer. But we are not better off with more money. Any amount of money is optimal. It makes no difference, economically, if a loaf of bread costs two cents or two dollars, provided either amount is the same portion of the total. But it makes a tremendous difference if the amount of money in circulation is artificially increased.

Before the invention of paper money, the king's agents would clip the edges off the coins, and demand that the people accept them at their old value. Or the government would call in the coins, melt them down, and reissue them at the old value but with less precious metal.

Things got worse with the invention of paper money, since there was a limit to the debasement of gold and silver coins, and they could not be printed up on a government printing press at will. And things got much worse with the introduction of central banking, perhaps the most disastrous step in economic policy ever taken. As demonstrated by our own beloved Federal Reserve System, under central banking, the government can inflate until the cows come home, and unlike the more honest forms of crookery dominant in past ages, pass it off as a normal or even necessary part of the economy. Indeed, anti-gold Keynesian economists would claim exactly that.

Former Vice President Walter Mondale was once heard to say, after a briefing by an economist during the 1984 presidential campaign, "Now I finally understand the Federal Reserve." Well, probably not, but it shows another problem. The Fed obfuscates. It's a giant fog machine, designed to fool the victims of its policies, i.e., most of us. In the process, it even fools some of the politicians, as I discovered during my terms in the House of Representatives.

Fed disinformation is politically necessary. After all, although it was founded to inflate, that is, to depreciate the dollar for the benefit of the government and its friends, it can't very well admit to that. Why, the voters might get angry. So instead, we get such howlers as the press telling us that the Fed is "fighting inflation," when all it does *is* inflate, as well as cartelize the banking industry, allowing it to inflate in unison with the central bank.

The Fed also causes the business cycle, recessions, and depressions, as Mises demonstrated, bringing about immense suffering.

The establishment of the Fed also meant the gradual destruction of the gold standard that had made possible the freedom and prosperity of the nineteenth century. (Not that the period was monetarily idyllic. We also had two early central banks and Lincoln's greenback inflation, for example.) When the Fed was established under Woodrow Wilson, another warmonger, in 1913, the gold cover on the currency was reduced to 40 percent. Then our third great warmongering president, Franklin D. Roosevelt, confiscated the people's gold, and took America off the domestic gold standard.

Warmongers Johnson and Nixon finished off even that attenuated gold standard in 1968 and 1971 (did I mention that the Fed makes the funding of war much easier?), and since then, we have been on a pure fiat standard.

A pure fiat money standard is not only economically and politically disastrous, it is also a moral calamity, as the decline of our nation in that sphere has also shown, since—among other things—inflation encourages profligacy and penalizes thrift. Yet, with the weakness of the dollar

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on international exchanges, not to speak of people's increasing worries about the future and doubts about the government, I believe we are coming to a time when an alternative can be considered: honest money, hard money, and sound money—the gold standard. Certainly the idea has somewhat more academic and political support than in the past, when Keynesian economics ruled almost unchallenged.

How appropriate, then, is the publication of *The Lustre of Gold*. One of the great things Hans F. Sennholz has done since assuming the helm at FEE is to publish a series called "The Freeman Classics," which collect the great essays from that journal by topic. This is one of the best. Its 17 essays represent an impassioned and eloquent argument for the gold standard as the only money worthy of a free and civilized people.

Five pieces by Henry Hazlitt and three by Dr. Sennholz are the stars, but there are also excellent contributions from such men as Elgin Groseclose, Lawrence Reed, Mark Skousen, and Robert Anderson, with a learned and rousing introduction by Dr. Sennholz as well.

All point to the same conclusion. We, and indeed the entire world, need, in the words of Hazlitt, a "100 percent reserve gold standard." Only this system, and not the watered-down varieties like the gold-exchange standard, can abolish inflation and the business cycle, eliminate the partial barter system of fluctuating fiat currencies internationally, and give to our people the sort of sound economic growth that capitalism promises, but has not delivered since the evil day in 1971 when Nixon removed the last gold restraint on the Fed.

In our most productive periods, money was worth more every year, as its supply increased very slowly through gold mining, and the supply of goods and services exploded through near-laissez faire. It sounds like science fiction now, but savers were rewarded by seeing their savings buy more at retirement than when they were put away. There was no central bank, no welfare state, and no warfare state.

This is how a free market, gold standard America worked. For the sake of our children and grandchildren, and of our liberty and prosperity, may it be so again. □

Former Congressman Ron Paul was a co-founder and member of the U.S. Gold Commission, where he brought about the restored minting of American gold coins. Dr. Paul is also author of Gold, Peace, and Prosperity *and co-author of* The Case for Gold.

Loving Your Neighbor: A Principled Guide to Personal Charity

Edited by Marvin Olasky

Capital Research Center • 1995 • 146 + vi pages • $15.00 paperback

Reviewed by Montgomery B. Brown

Loving Your Neighbor is essentially a sequel to *The Tragedy of American Compassion*, Marvin Olasky's highly influential history of efforts to fight poverty in America. The earlier work shows how, over time, the spiritual foundation and personal character of assistance to the needy in our country were largely undermined by expansive government programs. Each chapter of *Loving Your Neighbor* describes a particular organization or program for helping the poor, and each confirms lessons drawn from Olasky's history: the successful ventures are typically spiritually grounded, private, and modest in scale, while the secular and more ambitious public programs are mostly ineffective and often harmful.

Loving Your Neighbor contains a dozen essays previously published in the Capital Research Center's newsletter *Philanthropy, Culture, and Society*. Olasky himself wrote three and co-wrote another. The collection is divided into three sections: one describing efforts to help homeless people, one portraying youth programs, and one on urban renewal projects. (One of the chapters on helping the homeless was written by Gerald Wisz, who profiled the same organization for *The Freeman's* October 1994 issue.) The essays are united by simple principles that Olasky restates in the afterword to *Loving Your Neighbor:* "think small, and think of souls rather than bodies."

Every successful program depicted has a religious, or more precisely, biblical basis that gives it guidance and stability. To begin with, the Bible instructs those working for charities that the needs of the poor go well beyond the financial or material. It teaches that more than wealth is needed to build (or rebuild) a community, more than square meals to nourish a child. A biblical underpinning is also invaluable in sustaining volunteers who labor in a field with small rewards, frequent failures, and strenuous demands for patience and humility.

Successful efforts also draw from the Bible the conviction that true charity cannot undermine the responsibility of those who receive it; on the

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contrary it must promote responsibility. In most cases that need is met initially by demanding work and good behavior from those who accept food, shelter, housing, or other goods. In the same way, providing meals that allow addicts to spend more money on drugs or booze is rightly seen not as helping, but harming, the recipients.

Because the problems of the underclass and its neighborhoods are deeply rooted and almost invariably call for changed habits, a small scale is imperative for success. Modest size allows for the moral support as well as the accountability that together can turn around a wayward individual or community. As the size and scope of efforts to help the poor increase, there is a persistent tendency for a misguided set of priorities to take over. The number of people being "served" and the level of help (typically measured in dollars) that each client receives become the standards of excellence. This is the all-too-familiar phenomenon of allowing a process to become more important than the outcome it was designed to bring about.

Loving Your Neighbor will not be a smashing success like *The Tragedy of American Compassion*. But for people who work with the poor it will provide useful examples and illustrations to reinforce the basic principles in Olasky's previous book. □

Mr. Brown is Director of Publications at The Philanthropy Roundtable in Indianapolis, Indiana.

The True State of the Planet

Edited by Ronald Bailey

The Free Press • 1995 • 472 pages • $15.00 paperback

Reviewed by Matthew Carolan

Those who have studied logic or critical thinking are probably familiar with the informal fallacy of the "false dilemma," a kind of pseudo-argument in which a speaker pushes you into agreeing with him, or accepting an unwanted alternative. For example: if we don't raise taxes to save this program, then (fill in the blank) will be *"devastated."* This kind of thinking, so common today, also arrogantly sweeps aside any mediating role for the rest of humanity, as the speaker implies that only he or she "cares" enough to "help."

According to recent polls, the public has for the most part bought this fallacy when it is applied to environmental regulation, displaying a remarkable willingness to trade freedom for "a clean environment." This is due perhaps to anecdotal experience with human selfishness, or dead fish. But, this is also due, no doubt, to general ignorance about the way property rights and the free market work to mediate dilemmas affecting the public good. What's more, as we have seen in Congress of late, environmental issues are so complex that even a good number of limited-government advocates have difficulty explaining exactly how the market can protect the environment.

The True State of the Planet makes two major contributions toward greater articulation. First, it makes a common body of evidence available to the reader, to make reasonable environmental judgments and predictions possible. Second, in straightforward language, based on that evidence, the book conveys a remarkable alternative vision of the role property rights and free markets have played, and can play, in enhancing the quality of the planet.

In a series of ten essays, prologue, epilogue, appendix, and tables of environmental standards or "benchmarks," from a variety of scholars, this book reports what is for the most part wonderful, exciting news about dear old Gaia. For example, Nicholas Eberstadt shows, contra Malthus, that population growth has led to an explosion of human productivity and resources. His point is complemented by Dennis Avery's educational survey of the phenomenal success of the Green Revolution. Indur Goklany shows, counterintuitively, that air quality has been steadily improving thanks to technological innovation. Stephen Moore, delving into metaphysics, argues that we must take stock of the non-material or spiritual side of our success with resources, which only suggests unlimited potential for growth. Meanwhile Fred Smith's epilogue provides an excellent wrap-up by explaining how differing worldviews shape the environmental debate. These are but a few of the fine essays.

While there are the occasional speed bumps of technical jargon along the way, and even some dry prose in spots, this book is nevertheless a terrific primer for the man-on-the-street advocate of free markets, who, I suspect, is like me—lacking in intellectual ammunition in this area more than most others. Here, population growth, air and water quality, food, energy, and resource supply, species extinction, and environmental carcinogens, are all discussed, with numerous

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photos and charts to assist in understanding. Once you give this book some concerted study, it may turn you into what Fred Smith calls a "cornucopian." A suitable philosophy for those who believe there are a wealth more people around to "care" than government bureaucrats. □

Mr. Carolan is Executive Editor of National Review.

Saving the Planet with Pesticides and Plastic: The Environmental Triumph of High Yield Farming

by Dennis T. Avery

Hudson Institute • 1995 • 432 pages • $12.95 paperback

Reviewed by E. C. Pasour, Jr.

The media is all too eager to spread the message of "doom and gloom" environmentalists. Pesticides and chemical fertilizers pose an imminent and growing threat both to human health and to wildlife. Population growth is spiraling upward out of control and high tech methods of farming are not "sustainable." The solution in this view is to eliminate or to drastically reduce the use of manufactured chemicals in the production of food and fiber.

Dennis Avery's new work is an effective antidote to this conventional wisdom that high-yield agriculture poses a threat to human health and the environment. Avery, an agricultural economist, spent 30 years in the federal establishment, serving both in the Department of Agriculture and the State Department.

First, the author shows that the doomsday prophets, including Rachel Carson, are often wrong on the facts. Pesticide residues are not a significant health risk. Indeed, the natural chemicals in foods are more dangerous than pesticide residues, according to Dr. Bruce Ames, the noted biochemist and molecular biologist at the University of California at Berkeley.

The use of DDT, contra Rachel Carson, is not a serious threat to humans and did not decimate the population of wild birds. The EPA administrator banned DDT not because there was demonstrated harm but because he feared a political backlash from readers of *Silent Spring*.

World population is not spiraling out of control. The most likely projection is that population will rise from the current level of 5.4 billion to peak at eight billion people in 2030 and then trend downward for the rest of the century. Moreover, economic conditions are a key factor in the population equation. Birth rates, usually high in poor countries, invariably decrease with economic development.

Second, Avery shows that environmentalists' pleas for chemical-free farming, if successful, would harm both human health and the environment, particularly wildlife. The way to preserve wildlife is to save its habitat. However, the elimination of, or significant reduction in, the use of farm chemicals would mean a substantial increase in land area cropped—and reduction in wildlife habitat. Thus, by preserving habitat, the current system of high-yield farming helps protect wildlife!

Pesticide use, strange as it may seem, is also a boon to public health. Eating more fruits and vegetables can cut cancer risk by 50 percent and markedly reduce heart disease. However, only 9 percent of U.S. consumers eat the recommended five servings of fruits and vegetables per day. Thus, anything that reduces consumption of fruits and vegetables will cost lives. Pesticides are critically important in assuring ample year-round supplies of reasonably priced and attractive fruits and vegetables. Eliminating pesticides would mean lower yields, higher prices and reduced consumption of fruits and vegetables—and higher cancer rates!

The defense of high-yield farming is not a defense of the status quo. Avery explores the environmental implications of protectionist policies that prevent sugar and other farm products from being produced in areas of their comparative advantage. Such policies distort the pattern of production of farm products, create environmental problems, and lead to the use of more farm chemicals. For example, farm programs in the United States and Western Europe create artificial incentives for farmers to increase yields and lead to overuse of fertilizers and pesticides.

This book makes a compelling case that high-yield agriculture and free trade throughout the world are the best ways to protect human health and environmental resources. This approach is not risk-free but is far less risky than the alternatives. □

Dr. Pasour is Professor of Agricultural and Resource Economics at North Carolina State University.

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The Vision of the Anointed: Self-Congratulation as a Basis for Social Policy

by Thomas Sowell

Basic Books • 1995 • 305 pages • $25.00

Reviewed by Thomas J. DiLorenzo

At a June 1993 luncheon at the Heritage Foundation, I had the privilege of sitting next to Tom Sowell and discussing current events with him. I asked him what he made of the bizarre phenomenon of famous "peaceniks," such as former Senator George McGovern, publicly calling for the carpet bombing of Bosnia. "The Left always has to be morally one up," was his response. This statement, it turns out, is the theme of Sowell's latest book, *The Vision of the Anointed*. A more precise definition of this "vision" is stated in the subtitle: "Self-Congratulation as a Basis for Social Policy."

The prevailing vision or world view of the intellectual and political elite of our time, Sowell writes, is "a vision of differential rectitude. . . . Problems exist because others are not as wise or as virtuous as the anointed." All the crusades of the anointed over the past century—from eugenics to environmentalism, Communism, Keynesianism, the welfare-regulatory state, etc.—share several key elements, according to Sowell:

1. Assertions that a great disaster to society is about to occur.
2. Calls for massive government intervention to avert the impending catastrophe.
3. Disdainful dismissal of contrary arguments as uninformed, irresponsible, or motivated by "unworthy purposes."
4. The policies of the anointed are implemented and are themselves disastrous.
5. The anointed steadfastly refuse to acknowledge mountains of evidence that their policies have failed while accusing their critics of dark motives.

The meat of the book is a careful empirical analysis of dozens of politically-correct policies and theories, from the "war on poverty" to crime, environmentalism, the public school monopoly, affirmative action, and many others. In each case, Sowell shows how the anointed simply ignore evidence (and common sense), invent vocabulary designed to preempt issues rather than debate them (i.e., referring to the U.S. Postal Service, but not your typical grocery store, as a "public service"), and persistently declare their moral superiority over those who would disagree with them.

Those who maintain this vision tend to be power-hungry egomaniacs who prefer that their own personal preferences "supersede the preferences of everyone else." Government dictates are to supersede both democracy and markets in order to impose "solutions based on their [the anointed's] own presumably superior knowledge and virtue."

This book is must reading for those who wish to understand the mindset of the statists who dominate politics, the media, and academe. It is an excellent companion to Sowell's earlier book, *A Conflict of Visions*, and I also found it to be quite similar in many regards to Hayek's *The Road to Serfdom*. Unlike Hayek, however, Sowell accuses his intellectual opponents of considerably more than mere intellectual error. □

Dr. DiLorenzo is Professor of Economics in the Sellinger School of Business and Management at Loyola College in Maryland.

The Tax Racket: Government Extortion from A to Z

by Martin L. Gross

Ballentine Books • 1995 • 319 pages • $12.00 paperback

Reviewed by Raymond J. Keating

Every tax levied by government somehow distorts economic decision-making and drains resources away from productive private-sector ventures. As Jean-Baptiste Say succinctly observed in his *Treatise on Political Economy*, "Taxes and restrictive measures never can be a benefit: they are at best a necessary evil. . . ."

Living in a misguided century, where big government mistakenly has come to be seen as a benevolent problem solver, individuals often avoid thinking about the many evils of taxation. Thankfully, Martin Gross' book *The Tax Racket: Government Extortion from A to Z* serves as a stark reminder.

If the reader seeks an academic treatise on the economics of taxation, he should probably look elsewhere. *The Tax Racket* is meant to stir America's anti-tax spirit. It surely accomplishes this mission. With little subtlety, Gross reveals the many costs and problems wrought by different forms of taxation. From airline levies and

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audits to withholding taxes and "zany tax stories," Gross does indeed explain the evils of taxation from "A to Z."

Along the way, the author offers some sound reform measures as well. For example, he calls for the elimination of capital gains taxes, the eventual privatization of Social Security as Chile has done, the end of county government and its commensurate tax burden, and believes that the IRS should be held accountable to a document called the Bill of Rights.

The primary target of *The Tax Racket* is the income tax. Gross essentially argues—and correctly I think—that the income tax remains the greatest evil among many evils. By its intrusive nature and legions of government IRS agents, the income tax constitutes an immediate affront to individual liberty. By directly raising the costs of working, investing, and risk-taking, the income tax quells economic growth and opportunity. As it was born by class warfare rhetoric, the income tax continues to feed mistaken and dangerous class-based thinking. As already noted, every tax brings with it many problems, but none seemingly so vast and distasteful as the income tax.

Gross wisely argues for disposing of all income taxes—federal, state, and local. Before getting into what kind of tax should replace the income tax, he first outlines a plan for greatly reducing the size of government. So while Gross calls for the income tax to be replaced partially with a national retail sales tax (bringing with it a different, though less severe, set of problems), Gross understands that the most sound "substitute" for an income tax is substantial government spending reductions.

In the perverse vernacular of today's public policy debates, a suggestion to cut taxes is met by the question: how will you "pay for" your tax cut? The best answer remains: cut government spending.

When combining *The Tax Racket* with two of his previous bestsellers—*The Government Racket: Washington Waste from A to Z* and *A Call for Revolution: How Washington Is Strangling America—And How to Stop It*—one realizes that Martin Gross may indeed be the Stephen King of the anti-government crowd. That is, he tells horror stories in an entertaining fashion. Fortunately, though, if his advice eventually is heeded on eliminating the income tax and cutting government spending, the story will have a happy ending. □

Mr. Keating is chief economist for the Small Business Survival Foundation.

Dark Rivers of the Heart

by Dean Koontz

Knopf • 1994 • 487 pages • $24.00

Reviewed by Russell Madden

Had this novel been released after the bombing of the Oklahoma federal building, it would no doubt be condemned by the Washington establishment as paranoid, extremist, hate-filled, and un-American. In its criticism of the abuses committed by those possessing the weapon of government power, *Dark Rivers of the Heart* pulls no punches. Though Koontz's name is most closely associated with the horror genre, in his latest tale he portrays monsters of a different stripe: the dedicated servants of a secret governmental department which has taken upon itself the roles of judge, jury, and executioner.

The prime mover of this extra-legal organization is Roy Miro, "an equal-opportunity killer." The portrayal of this "slightly pudgy" yet "appealing, soft-featured" public servant as a "compassionate" man dedicated to moving our culture one small step at a time towards perfection and true equality is chilling in its cumulative effect.

Despite his "tender" disposition, Roy is not above giving a "comeuppance" to those who would thwart his goals or slight his character. He relishes opportunities to even scores against anyone who dares to disagree with his noble vision of "order, stability, and justice." Captain Harris Descoteaux of the LAPD discovers this to his horror when he is plunged into a continuing nightmare of manufactured charges, planted evidence, and property seizure which leaves him and his family destitute, homeless, and fearing for their lives.

Perhaps most frightening about Roy, however, is the fact that many people in this country would see nothing unusual about his views. For Roy, utopia will arrive when everyone is identical to everyone else, when morality is recognized as a relative guide in which the ends justify the means, when "social security and peace" are more valued than freedom; when it is acknowledged that anyone "obsessed with his privacy [is] an enemy of the people"; when the world envisioned in John Lennon's song, "Imagine," becomes a reality.

Exciting and suspenseful as the story is, the truly refreshing aspect of the book is the way in which Koontz takes on the government and

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defends freedom, reason, and individuality. Asset forfeiture, environmental zealots, power-hungry politicians, and the dangers and benefits of an overly computerized society all come under his scrutiny.

Dark Rivers of the Heart touches upon a variety of subjects of interest to friends of freedom: the dangers of relying upon a "compassionate" government to solve our problems, how satellite surveillance, interconnecting computer data bases, and other elements of burgeoning high technology can be used to subvert our rights as well as to provide us with the latest in entertainment. Whether he is exploring the nature of the drug war, the excesses of the BATF, EPA, and DEA, or the abuses exhibited in the cases of Randy Weaver and the Branch Davidians, Koontz's ability to dramatize the negative effects of such issues is not only entertaining but educational. Too frequently, discussions of out-of-control government fail to combine emotional with intellectual arguments. With its broad appeal, Koontz's fiction may alarm people enough to ignite discussion of these critical issues on a wide scale. □

Mr. Madden is an instructor in communications at Mt. Mercy College in Cedar Rapids, Iowa.

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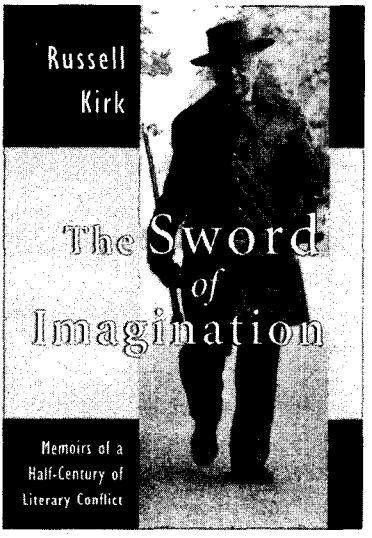

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